

The Win-Win Approach to Reasonable Accommodations: A Self-Advocacy Strategy for Workers with Disabilities



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Introduction

If you are currently employed or looking for a job and have a disability or condition affecting your ability to work, this brochure is for you. Should your disability affect your job performance, you will need to identify job “accommodations” that enable you to continue doing your job. The best argument for changing how you do your job and the equipment you need (like tools and computers) is that these accommodations will help you do your job better.

Everyone wins when employees stay on the job, so we highly value a “win-win” team approach to discussing job accommodations with your employer. The “win-win” approach is more likely to lead to an agreement about your on-the-job needs than a legal process. It is also more likely to encourage a healthy long-term work relationship with your employer.

Although we highly recommend this approach, we realize that some employers may not agree with an accommodation review or an accommodation that best suits your needs. We also recognize the risks of telling your employer you have a disability, which is a requirement when asking for accommodations. So, you first need to know your legal rights under a federal law called the Americans with Disabilities Act (ADA).



What Is the Americans with Disabilities Act (ADA)?

The ADA is the most important civil rights law for people with disabilities in the history of the world. It was signed into law in 1990 by President George H.W. Bush and updated in 2008 in a law signed by President George W. Bush. The ADA protects people with disabilities in areas similar to those set by the federal government for women and minorities under the Civil Rights Act of 1964. One of the key parts of the ADA is Title I, the employment part, which requires employers to consider your needs for on-the-job accommodations and improves access to those accommodations. The beginning of the process starts with you- it is not up to your employer to determine that you need accommodations and then offer you one or more. Knowing what the ADA says about your employment rights will help you advocate as a knowledgeable and confident “win-win” employee.



You are covered by Title I of the ADA and may receive reasonable accommodations in the workplace if (a) you have a disability; (b) you meet the employer’s requirements for the job you seek or hold; and (c) you have the ability, with reasonable accommodations if needed, to perform the main functions of the job. As you engage in the “win-win” process, it is important to keep in mind that you have the law on your side.

What Does the ADA Do?

Simply put, the ADA prevents unfair treatment of people with disabilities. Here are some keywords and phrases you should know:

Disability: physical or mental impairment that limits one or more major life activities or bodily functions -- or having such an impairment in the past. Examples of life activities include walking, seeing, hearing, speaking, learning, caring for oneself, and working. Examples of bodily functions include the immune, digestive, respiratory, circulatory, neurological, and excretory systems.

Qualified: A person who meets the main qualifications for a job and can do the job’s main functions, with or without reasonable accommodations. This does not mean “with and without reasonable accommodations.” You are qualified for the job if you can perform the job with accommodations as needed.

Essential Functions: main job duties (as opposed to less important duties) that the person must do, with or without reasonable accommodations. Essential functions may be identified by a job analysis and recorded in the job description given to all future employees and all current employees who request it.

Do All Employers Follow the ADA?

All employers must follow Title I of the ADA, except employers with less than 15 employees, the Federal government, Native American tribes, and private membership clubs that do not pay Federal taxes. However, if your employer is within the Federal government, or is a Federal contractor or a program receiving funds from the Federal government, there are additional protections. Sections 501–504 of the Rehabilitation Act of 1973 prevent the unfair treatment of people with disabilities by the Federal government.

Why Do We Need the ADA?

The ADA and its revisions were made to end unfair treatment of those with disabilities in all parts of society. Concerning employment, you should be judged on your ability to do the job, not on untrue beliefs or assumptions about a specific diagnosis or on fears about a particular disability. A disability may cause changes in things you can do over time, but there are ways to deal with many of those changes. Also, you have the legal right to a reasonable accommodation. Employers who are required to follow Title I are required to consider and accommodate disability-related limitations.



But these accommodations must be reasonable and not cause undue hardship for the employer. Two key phrases will be talked about in more detail: “reasonable accommodation” and “undue hardship.”

What Is a “Reasonable Accommodation”?

An accommodation is a change to the work environment or how a main job function is completed. The purpose of the accommodation is to allow a qualified person to enter or stay in employment by removing or reducing major disability-related work issues. Many work issues occur when problems related to your disability get in the way of your job performance. For example, you may find that your main workstation is too far from other areas in which you have to work.

Physical barriers such as stairs or slippery floor coverings may affect moving about the workplace. You may have problems with the technology you must use, things such as online forms, or the conditions under which you must work, such as temperature that is too hot or too cold, or lighting that bothers you. Finally, you may run into specific job tasks with physical requirements that create problems for you or others, such as lifting or moving heavy objects.

The ADA describes several solutions for on-the-job barriers. They are:

| | | | |
|------------------------------|----------------------|--|----------------------------|
| Changing existing facilities | Changing the job | Changing work schedules | Moving to another position |
| Changing equipment | Buying new equipment | Providing readers or interpreters for employees who cannot see or hear | |

In the table below, we have included some solutions that are helpful to people living with disabilities. You may ask for a meeting with your employer to develop solutions similar to those we have here, but, as the word “reasonable” means, an accommodation cannot create an undue hardship for the employer.

| Job Function | Disability Factor | Possible Accommodation |
|---|--|--|
| Going into a place of business | Muscular weakness | Changing existing facilities (like an electronic door opener) |
| Supervising activities in the gymnasium (climbing and standing) | Loss of strength in the lower half of the body | Changing the job (like supervising study halls instead of activities in the gymnasium) |
| Conducting medical exams more than 8 hours a day | Fatigue | Changing work schedules (like an 8-hour day with breaks) |
| Supervising construction operations and activities | Fatigue and moving/balance problems | Moving to another position (like an indoor job as manager) |

| Job Function | Disability Factor | Possible Accommodation |
|--|--|---|
| Turning office equipment off | Numbness of hands, problems with hand/eye coordination | Changing equipment (like installing a foot pedal to control equipment) |
| Remembering details, setting priorities, and coming up with production schedules | Difficulties with thinking and memory | Buying new equipment (like a tablet and memory enhancement/organizational apps) |
| Reading reports and typing | Blurred vision | Putting in place readers and interpreters (like a reader/proofer in office when needed) |

What Does “Undue Hardship” Mean?

The ADA defines an undue hardship as an accommodation that is too costly, extensive, or disruptive. Questions to ask when you need to decide if an accommodation is an undue hardship include:

- Does the accommodation cost more than other options that are just as helpful in removing work limitations?
- Does it require significant changes that will get in the way of the business?
- Will it negatively affect other employees or customers?
- If any of the answers are “yes,” an employer is not required to provide the requested accommodation.



Undue hardship depends on the situation. Things influencing hardship on the employer include the business’ size and the ability to lower the accommodation cost to the employer. An undue hardship for one business may not be an undue hardship for another. For example, a small employer may not be able to afford putting in an automatic door opener, but a large company probably could. Don’t limit your options by deciding that one solution is an undue hardship for your employer ahead of time. The “win-win” approach will help you to explore many options with your employer.

How to Plan Your Approach

Now that you understand the ADA's main employment requirements and your rights, let's think about the steps involved in discussing your on-the-job needs with your employer. We believe that an informal and friendly talk between you and your employer without bringing up the ADA is the best way to start.

Before you say anything to an employer, think about the problems you are having. This guide gives you some suggestions about solutions. You might also want to get in touch with the ADA National Network (800-949-4232 [V/TTY], adata.org) and your state's vocational rehabilitation program (known as the Office of Vocational Rehabilitation in Kentucky; 800-372-7172 [V/TTY], www.kcc.ky.gov/Vocational-Rehabilitation/Pages/Kentucky-Office-of-Vocational-Rehabilitation.aspx) to learn about solutions that have worked for others.

ADA National Network

800-949-4232 [Voice & Teletypewriter]
adata.org

Office of Vocational Rehabilitation in Kentucky

800-372-7172 [Voice & Teletypewriter]
www.kcc.ky.gov/Vocational-Rehabilitation/Pages/Kentucky-Office-of-Vocational-Rehabilitation.aspx

In addition, the Job Accommodation Network (JAN) at West Virginia University is a free and private resource with information about accommodations in the workplace and many other areas of inclusion and ADA implementation. Contact JAN at 800-526-7234 (voice), 877-781-9403 (TTY), or visit AskJAN.org.

Job Accommodation Network (JAN)

800-526-7234 (voice)
877-781-9403 (TTY)
AskJAN.org



Many people put off dealing with employment-related problems until it's too late, at which time their likelihood of keeping the job may be low. It is better to find solutions through the accommodation process before this happens.

First, make a list of accommodations and then think carefully. How would each of these accommodations help? Think through each accommodation in terms of how practical it is for you. Then, consider what your employer would think. Is it a good price? Does it change the way business is done? Now, write your list a second time, putting the best ideas first.

Next, consider whom to speak to at your job. You may feel most relaxed talking with your supervisor, but company policy may require that you discuss these issues with someone in the human resources department. Some employers require written messages or e-mail. Find out what is required.

You now know who to talk with and, after reading the next sections, you will know the points you should cover. However, most people find it difficult to discuss details of a disability with their employers. In a way, you are telling your employer that you can no longer do your job without the help of accommodations.

At first, you are not legally required to say you have a particular diagnosis or health condition. You need to state that you have a disability to be covered by the ADA, especially if you speak to someone who does not know you. But you may not need to tell your specific diagnosis. However, in practice, most people do tell their employers their diagnoses.

There are advantages and disadvantages to this. They depend on the individual workplace. If other employees are using accommodations successfully, then mentioning your specific diagnosis may be the best option. In job interviews, when your abilities are unknown to your interviewer and, particularly, when you do not need a job accommodation, most experts suggest not telling your diagnosis. Remember, you are not required to disclose a disability and discuss your accommodation needs until after the employer makes a job offer, unless the accommodation is needed for the hiring process.

It will help if you get a letter from your doctor about your disability. If you are not going to reveal your diagnosis, ask your doctor to describe the issues that impact your productivity without naming your specific injury or illness. Your employer can ask for this letter from your doctor to make sure that you are a person with a disability under the ADA.

In talking with your employer, focus your conversation on the main functions of your job. Then say that an accommodation will help you keep up your productivity.

Practice what you want to say with a friend or someone you trust. Remember to mention the experience you have gained as an employee. Employers do not want to lose experienced and loyal workers. Replacing an experienced employee costs time and money and always involves some risk for an employer.

How to Prepare to Discuss an Accommodation Request

Here are some tips on preparing for your meeting. Remember, you can bring an advocate, job coach, or other person to help you during the meeting.

- Dress in work-appropriate clothes. Wear what you would normally wear to work.
- Arrive on time.
- Thank your employer for meeting with you. Then begin by stating the purpose of the meeting.
- Use appropriate body language. Keep eye contact during the conversation, squarely face your employer, lean slightly forward, nod to show you're paying attention, and have a warm, friendly facial expression.
- Use appropriate verbal language. Answer questions honestly and directly. Use friendly terms: "I would like to explore with you ...," "It makes sense for both of us to ...," and "Together, we could come up with" Avoid saying "I want ...," "I'm entitled to ...," or "You have to..."
- Be positive. Focus on ways that your increased productivity will help your employer.
- Don't dwell on the past, and don't be angry if your employer may not understand at first.

The ADA clearly states that you should be involved in deciding what specific accommodations your employer should provide. The teamwork phase of the "win-win" process involves you and your employer working together to come up with the accommodations that would benefit both of you. As you follow these tips, keep in mind the mutual benefit of effective on-the-job accommodations.

Remember, although the ADA requires that your employer provide a reasonable accommodation, the employer does not have to provide your first choice. It is important to be willing to compromise and come to an agreement.

- Give your employer a copy of the list you came up with at home, with accommodations ranked in order of your top choices. Ask your employer to

rank them in order of his/her top choices, as a way to start the process.

- Compare the two lists. If you and your employer do not agree, point out again the mutual benefits of the accommodation you prefer. Explain to your employer how your idea is the best one, rather than hinting that the employer is wrong.
- Be prepared to work together on an agreement. You can do this from a position of strength by keeping in mind your ADA protections. Do not mention your right to argue your employer's decision, but remember that it does exist.
- Be open to questions from and dialogue with your employer. Don't simply make your needs known and walk out of the room. The ongoing communication you start through this process will help to solve any future issues that may come up regarding on-the-job accommodations.
- End the meeting. If you reach an agreement, be sure to discuss next steps and agree on a timeline for action. If your employer suggests an unfair strategy, ask for time to think it over. If you cannot agree, suggest that you both think about it some more. You may want to talk with other people about the ideas you have and your employer's ideas. In either of these cases, schedule another meeting within 10 days.

Implementing Reasonable Accommodations

In most cases, you and your employer will identify an accommodation plan that works for both of you. Because your health, your job, and the work environment can change over time, you must keep track of the effectiveness of your on-the-job accommodations and talk frequently with your employer. Here are a few other points to remember:

- Take some time to get used to your accommodation. If the accommodation involves technology, ask for appropriate training.
- Be aware of changes in your health and functioning and how those changes might be discussed through the "win-win" process. Remember, the ADA does not limit the number or types of accommodations that can be provided. You may need to ask for a different accommodation at a later date.
- Keep your employer informed about your condition, how your accommodations work, and your general job performance. Your employer will appreciate updates on your progress, and you both will enjoy the benefits of a good working relationship.

But, What If...?

If the collaborative “win-win” strategy does not result in acceptable solutions to your needs, if you see signs of unfair treatment on the employer’s part, or if you believe that the accommodation your employer has chosen would not help you to do your job, you have legal options to help you.

The ADA requires your employer to respond to your request in a timely manner. If your employer does not respond within 10 working days, make a follow-up telephone call or personal contact to set up a meeting. If you cannot come up with a good solution with your employer, you have the right to appeal or “argue” outcomes of the “win-win” approach.

Mention the ADA if, and only if, the collaborative process breaks down and your employer is unwilling to talk or work with you any further. You may choose to file a formal complaint with the U.S. Equal Employment Opportunity Commission (EEOC). For information on the EEOC, call 1-800-669-4000 (voice) or 800-669-6820 (TTY), or visit eeoc.gov. You must do this within 180 days of the unfair treatment.

U.S. Equal Employment Opportunity Commission (EEOC)

1-800-669-4000 (voice)
800-669-6820 (TTY)
www.eeoc.gov



We hope that the “win-win” strategy will work for you. But if it does not, you have rights under the ADA. The EEOC, disability advocates, and attorneys are available to help you protect your rights. For more information on legal or advocacy help, reach out to your state or local bar association, state or local advocates for people with disabilities, and other voluntary assistance projects in your area. Don’t assume legal help will be too expensive for you without looking into the resources.

Conclusion

The “win-win” approach is made to help you in working with your employer to come up with and implement solutions to your on-the-job needs. Mutually beneficial and cost-effective steps for keeping your productivity on the job are the main goals. By identifying your needs, understanding your legal rights under the ADA, and keeping in mind cooperative negotiation strategies for discussing accommodations with your employer, you have prepared yourself to be a confident and effective “win-win” strategist.

Sources of Additional Information

Job Accommodation Network

800-526-7234 (voice)
877-781-9403 (teletypewriter)
www.AskJAN.org

U.S. Equal Employment Opportunity Commission (EEOC)

1-800-669-4000 (voice)
800-669-6820 (TTY)
www.eeoc.gov

Rehabilitation Research & Training Center on Workplace Supports, VCU

804-828-1851 (voice)
804-828-2494 (teletypewriter)
www.worksupport.com

U.S. Department of Labor, Office of Disability Employment Policy

866-633-7365 (V/TTY)
www.dol.gov/odep



ADA National Network

800-949-4232 (V/TTY)
www.adata.org