

Navigating Accommodations for Mental Disabilities

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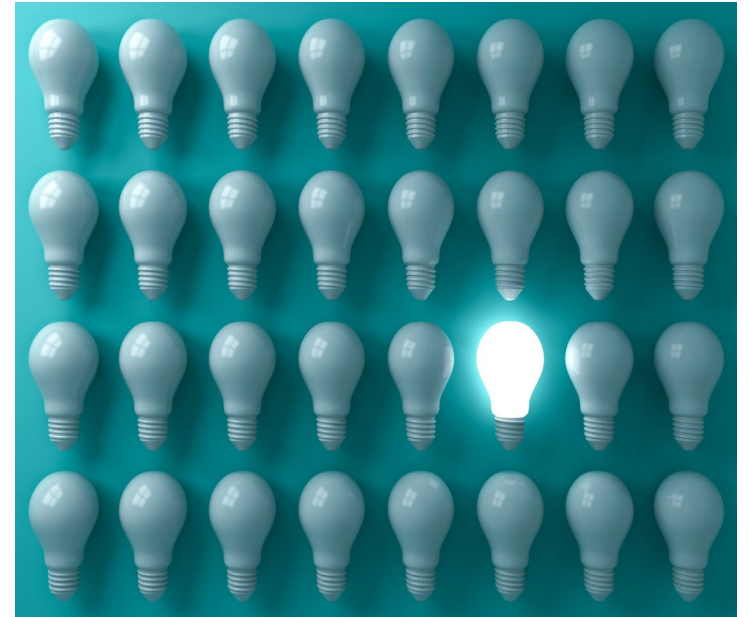
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What Is a Reasonable Accommodation?

- **Allows a qualified individual with a disability to perform the essential functions of the job, unless to do so would pose an “undue hardship” or pose a “direct threat” to health and safety**
- **Must be evaluated on an individualized basis – beware of bright line rules!**
- **Does not have to be employee’s preferred accommodation**



Who Is Protected?

- **Applicants and employees**
 - With a physical or mental impairment that substantially limits one or more major life activities
 - With a record of a disability
 - Regarded as having a disability
 - Associated with a person with a disability



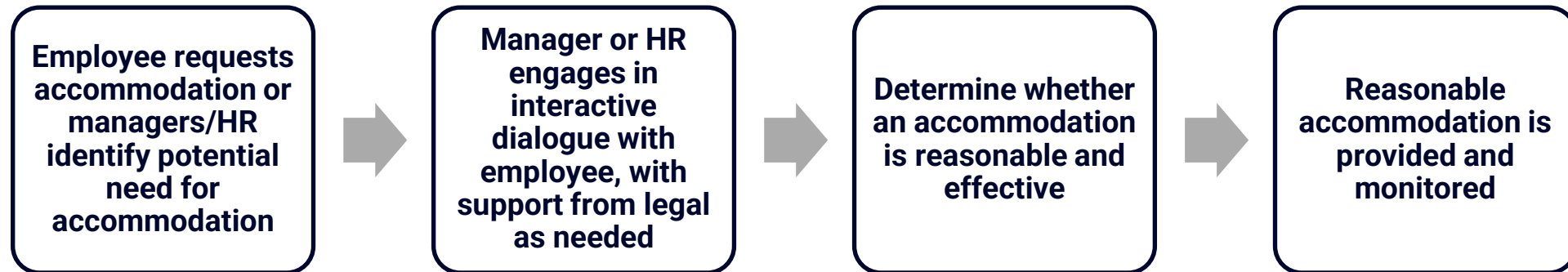
How Many Americans Are Disabled?

- **Appx 25% of Americans (61 million) per CDC**
 - Likely higher under ADA definitions
- **Appx 23% (14 million) participate in workforce compared to 68% for non-disabled per EEOC**
- **National Center for Ed. Statistics**
 - 15% of public school students receive special education or related services
 - 21% of undergraduate students reported having a disability



Process for Evaluating Accommodations

- **A five-step process:**
 - Recognize a disability when it exists
 - Evaluate the employee against the essential functions of the job
 - Never skip the interactive process
 - Make reasonable accommodations if no undue hardship exists
 - Have a process in place to document compliance efforts



Accommodations for Mental Disabilities

- **Telecommuting and/or working from home**
- **Part-time work hours**
- **Adjustments to start or end of work hours**
- **Leaves of absence**
- **Additional time for breaks**
- **Written or “clear” work instructions**
- **Frequent check-ins or written feedback**
- **Food or beverages permitted at workstations**
- **Removal of distractions from the work area**
- **Addition of room dividers/ visual barriers between workspaces to reduce noise or visual distractions**
- **Workspaces away from noisy machinery**
- **Increased natural lighting**
- **Music and/or noise canceling headphones**
- **Tape recorders for recording meetings**
- **White noise machines**
- **Software or programs to increase organization and/or productivity**

Best Practices

- **Develop a consistent policy for handling accommodation requests**
- **Enable employees to request accommodations**
- **Train managers and supervisors on what to do when they receive an accommodation request**
- **Analyze essential job functions**
- **Maintain detailed job descriptions**
- **Consult promptly with the employee regarding limitations and possible accommodations**
- **Log all activities, efforts, and communications**

Challenge # 1 – Remote Work

Hypothetical

Jerry works in the customer service department and has been with the company for seven years. He has worked remotely since the pandemic. A newly hired Vice President has decided to move all customer service employees back into the office for better oversight and training to address a decline in performance.

Jerry requests to work from home as an accommodation. He provides a doctor's note stating that he suffers from depression and the stress of a daily commute and worrying about his three cats being alone all day would negatively impact his mental health.

Hypothetical

- **Is working in the office an essential job function?**
- **What about the fact that the employee has successfully proven he can work remotely? Is he really working successfully?**
- **Is a request for “less stress” a valid request for accommodation?**
- **What other accommodations might be effective instead of working from home?**
- **What if the employer offers another option and the employee refuses?**
- **How important is the operational need to improve department performance?**

Montague v. USPS (5th Cir. 2023)

Dionne Montague, an employee for USPS in Houston, suffered from peripheral neuropathy that made morning travel difficult and requested to work from home in the mornings as a disability accommodation.

USPS denied her request, arguing that travel and morning office presence were essential job functions, and the district court agreed, granting summary judgment for USPS.

On appeal, the Fifth Circuit reversed, finding genuine disputes of fact about whether these functions were truly essential, noting that Montague's job description did not require travel, her actual travel was minimal, and colleagues in similar roles had successfully telecommuted. The court also questioned the reasonableness of USPS's alternative suggestions, such as relying on her husband or using taxis, given practical and financial constraints. The Fifth Circuit held that remote work could be a reasonable accommodation, and in this case, it was a question for a jury to decide, emphasizing the need for individualized assessment and a good faith interactive process.

Crews-Sanchez v. Frito-Lay, Inc. (4th Cir. 2024)

January Crews-Sanchez, an employee of Frito-Lay, requested to work remotely as an accommodation for her disability under the ADA.

The Fourth Circuit affirmed summary judgment for Frito-Lay, finding that Crews-Sanchez's essential job duties required her physical presence onsite, and remote work would not allow her to perform those duties. The court concluded that Frito-Lay lawfully terminated her employment and was not required to provide remote work as an accommodation in this context.

Challenge # 2 – Concerns Regarding Potential Violence

Hypothetical

Michael, a forklift operator, works the graveyard shift at ABC Distribution Center. He generally works alone, but when trucks come in, he is expected to assist with unloading. Last night, Mike screamed at Tom, a co-worker, who he accused of not doing his fair share of the unloading. When Tom yelled back, Mike pushed him, grabbed a pipe, and tried to hit Tom. Others jumped in and had to physically restrain Mike. They reported that Mike had become “unhinged,” that he was screaming that he had guns and that Tom should be careful. The lead sent Mike home from work to cool off.

Mike called the Distribution Center Manager the next day, apologizing and saying it would never happen again. He admitted he had forgotten to take his medication that day but would do better in the future. Now what?

EEOC Guidance

- EEOC guidance on accommodating mental disabilities requires employers to make reasonable accommodation for employees, except if the employee poses a “direct threat” of violence.
 - Determination must be based on an *individualized assessment* – consider the imminence of the harm, the likelihood that the harm will occur, the nature and severity of the potential harm, the duration of the risk.
 - Must be based on objective facts, not stereotypes or generalized fears.
 - Employer must engage in an interactive process to determine if there is any reasonable accommodation that would reduce or eliminate the risk.
- Employer can only remove an employee who poses a “direct threat” if there is a “significant risk of substantial harm” to themselves or others that cannot be eliminated or reduced by reasonable accommodation.

Felix v. Wisconsin Department of Transportation (7th Cir. 2016)

Eileen Felix, a DMV Field Agent Examiner with multiple mental health disabilities, was terminated by the Wisconsin Department of Transportation after a public incident at work involving hysterical screaming, suicidal statements, and self-inflicted injuries. Following the episode, Felix was placed on medical leave and required to undergo an independent medical evaluation, which concluded she posed an ongoing risk to herself and others.

Although Felix's psychiatrist later stated she could return to work, the employer relied on the independent assessment and terminated her employment, citing safety concerns. Felix sued under the Rehabilitation Act, alleging she was discharged solely because of her disability.

The Seventh Circuit affirmed summary judgment for the employer, holding that Felix was not terminated solely because of her disability but due to workplace behavior that indicated she was unfit for continued employment and posed a safety risk. The court clarified that employers are not required to tolerate threatening or disruptive conduct, even if caused by a disability, and that such behavior can render an employee unqualified under the law.

Challenge # 3 – Managing Difficult Accommodation Requests

Hypothetical

Background

Allison is a mid-level analyst at a regional office of a large corporation. She has a doctor's note which diagnoses her with ADD, which she has disclosed to HR. Her role involves frequent reporting deadlines, collaborative meetings, and direct supervision from her manager, Jordan.

Current Situation

Allison has reported that she has been experiencing increasing difficulty concentrating during long meetings, managing shifting priorities, and responding to Jordan's fast-paced and high-pressure supervisory style. She reports that Jordan often gives verbal instructions without written follow-up, which she finds hard to track.

Hypothetical

Accommodation Request

Allison submits a formal request for accommodations under the ADA (Americans with Disabilities Act), including:

1. A different supervisor — citing incompatibility with Jordan's style and its impact on her focus and stress levels.
2. Flexible work hours — proposing a later start time to align with her medication schedule and peak focus periods.
3. Modified supervisory style — requesting written instructions and weekly check-ins instead of ad hoc verbal updates.
4. Mediated dispute resolution — asking for a neutral third-party mediator to help resolve ongoing communication issues with others on her team.

Employer Response

HR acknowledges the request and initiates an interactive process. However, the company expresses concern about the feasibility of changing supervisors and questions whether Allison's requests are reasonable or essential to perform her job.

Hypothetical

- What obligations does the employer have in engaging with Allison's request?
- Under the ADA, what constitutes a "reasonable accommodation"?
 - Change in supervisor?
 - Modifying a supervisor's communication style?
 - Request for mediated conflict resolution?
- What other accommodations might be effective for an employee with ADD?
- How can the employer balance operational needs with Allison's rights?
- How can the employer document its decision-making process to mitigate liability?

Mastaw v. West Florida Medical Center Clinic (11th Cir. 2023)

Dr. Gerald Mastaw, a pain management doctor, alleged that his employer failed to provide a reasonable accommodation for his disability, posttraumatic stress disorder. Mastaw requested to report to a different supervisor, arguing that this change was necessary due to difficulties with his current supervisor.

The Eleventh Circuit affirmed summary judgment for the employer, holding that Mastaw's requested accommodation was not reasonable under the ADA. The court relied on guidance from the Equal Employment Opportunity Commission, and held that a transfer away from an incompatible supervisor is generally not a reasonable accommodation.

The court emphasized that the ADA requires accommodations that enable the employee to perform the essential functions of the job, but does not require employers to accommodate an employee in any manner the employee desires.



Menninger v. PPD Development (1st Cir. 2025)

Dr. Lisa Menninger requested accommodations from her employer, PPD Development, after her role was restructured to require more public speaking and client-facing duties, which exacerbated her social anxiety disorder.



Menninger's psychiatrist recommended minimizing such duties and suggested alternatives, including using a surrogate for presentations. PPD partially accommodated her requests but refused others, especially those related to client-facing activities.

After taking medical leave due to stress, Menninger was terminated. She sued for failure to accommodate, discrimination, and retaliation under the ADA.

The jury found in her favor, awarding Menninger over \$24 million, including \$10 million in punitive damages, concluding that PPD's response to her accommodation requests was not in good faith and amounted to unlawful discrimination and retaliation. The award that was upheld on appeal.

Challenge # 4 – “Regarded as” Disabled

Hypothetical # 1

Bob has been a top-performing administrative assistant for five years. Recently, he's been missing work and arriving late without notice. Bob offers various excuses for his absences – he had to drop his child off at school and traffic was bad – but does not tie his absences/late arrivals to a medical condition. Pursuant to the Company's practice of issuing progressive discipline, the Company provides him first with an oral and then a written warning regarding his absences and late arrivals.

On several occasions, Bob's manager thinks he has smelled alcohol on Bob's breath, but he has not addressed this with Bob.

Bob's absences and tardies continue. A meeting is held with him to issue him a final warning. During that meeting, Bob self-discloses he's an alcoholic and asks for time off to attend an inpatient rehabilitation program, along with a modified schedule upon return to attend outpatient rehabilitation and then AA meetings.

Hypothetical # 1

- Is alcoholism considered a disability under the ADA?
 - Is it a serious health condition under the FMLA?
- Can Bob be terminated immediately despite his self-disclosure of alcoholism?
 - Can he be disciplined?
- Can Bob be fired for being under the influence on the job? The Company has a strict zero tolerance policy for being under the influence while on the job.
- Is Bob entitled to leave for rehabilitation related to alcoholism?
- What obligations does the employer have to engage in the interactive process with Bob regarding his request for leave? What obligations does the employer have to engage in the interactive process with Bob if the employer suspects he has an alcohol problem?

Pena v. City of Flushing (6th Cir. 2016)

Noe Pena, a wastewater treatment plant operator for the City of Flushing, was terminated after refusing to attend a fitness-for-duty examination required by the city as a condition for returning to work following a medical leave for psychological reasons. Pena sued, alleging that the city regarded him as disabled in violation of the ADA.

The Sixth Circuit affirmed summary judgment for the city, holding that the request for a fitness-for-duty exam did not establish that the city regarded Pena as disabled, especially since the city's concerns were based on vague responses and changes in his demeanor rather than a perception of substantial limitations.

"The ADA is a shield against discrimination on the basis of disability; it is not a sword enabling employees who are not, in fact, substantially limited in any major life activity to refuse reasonable requests" by their employers and then use that statutorily-grounded request to plead a "regarded as" claim."

Hypothetical # 2

- **Bob returns from rehabilitation leave and works his scheduled days without incident. Three months after his rehabilitation leave, he misses two days of work, saying he was sick with the flu. The Company terminates Bob's employment.**
 - **Is this ok under the ADA and the FEHA?**
- **Same scenario as above, but before the Company addresses his absences, Bob asks for another rehabilitation leave.**
 - **Is the employer obligated to accommodate leave for a second treatment?**
 - **Cal. Labor Code § 1025**

Addressing Requests for Mental Health Accommodations

- Obtain medical documentation from the employee to ascertain how their disability affects their ability to perform the essential functions of their role. Provide follow-up requests for more information as needed.
- Ask whether, in light of that employee's specific condition, they can perform the essential functions of their job.
- Ask whether the employee's proposed accommodation would actually cause an undue hardship.
 - E.g., inconsistency with an internal remote-work policy isn't enough.
- Engage in an ongoing dialogue with the employee. If the proposed accommodation would cause an undue hardship, provide a different or other accommodation(s) and stay in communication with the employee to ascertain whether the alternative accommodation is sufficient.
- Ensure that an employee's request is not being taken less seriously simply because it is being sought for a mental disability rather than a physical disability.

Best Practices

- Beware of reliance on myths and stereotypes when deciding whether someone can perform essential functions.
- Delicate balance between gathering evidence on job limitations versus the employee's privacy rights.
- Flexibility is key.
- Documentation is critical.
- EEOC Guidance: Depression, PTSD & Other Mental Health Conditions in the Workplace: Your Legal Rights
https://www.eeoc.gov/eeoc/publications/mental_health.cfm
- EEOC Enforcement Guidance: Americans with Disabilities Act and Psychiatric Disabilities
<https://www.eeoc.gov/policy/docs/psych.html>



Thank You

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