

REQUESTING REASONABLE ACCOMMODATION

How must an individual request a reasonable accommodation?

When an individual decides to request accommodation, the individual or his/her representative must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. To request accommodation, an individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation."⁽¹⁹⁾

Example A: An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation.

Example B: An employee tells his supervisor, "I need six weeks off to get treatment for a back problem." This is a request for a reasonable accommodation.

Example C: A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation.

Example D: An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting reasonable accommodation. He does not link his need for the new chair with a medical condition.

While an individual with a disability may request a change due to a medical condition, this request does not necessarily mean that the employer is required to provide the change. A request for reasonable accommodation is the first step in an informal, interactive process between the individual and the employer. In some instances, before addressing the merits of the accommodation request, the employer needs to determine if the individual's medical condition meets the ADA definition of "disability,"⁽²⁰⁾ a prerequisite for the individual to be entitled to a reasonable accommodation.

May someone other than the individual with a disability request a reasonable accommodation on behalf of the individual?

Yes, a family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability.⁽²¹⁾ Of course, the individual with a disability may refuse to accept an accommodation that is not needed.

Example A: An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. This discussion constitutes a request for reasonable accommodation.

Example B: An employee has been out of work for six months with a workers' compensation injury. The employee's doctor sends the employer a letter, stating that the employee is released to return to work, but with certain work restrictions. (Alternatively, the letter may state that the employee is released to return to a light duty position.) The letter constitutes a request for reasonable accommodation.

Do requests for reasonable accommodation need to be in writing?

No. Requests for reasonable accommodation do not need to be in writing. Individuals may request accommodations in conversation or may use any other mode of communication.⁽²²⁾ An employer may choose to write a memorandum or letter confirming the individual's request. Alternatively, an employer may ask the individual to fill out a form or submit the request in written form, but the employer cannot ignore the initial request. An employer also may request reasonable documentation that the individual has an ADA disability and needs a reasonable accommodation. (See Question 6).

When should an individual with a disability request a reasonable accommodation?

An individual with a disability may request a reasonable accommodation at any time during the application process or during the period of employment. The ADA does not preclude an employee with a disability from requesting a reasonable accommodation because s/he did not ask for one when applying for a job or after receiving a job offer. Rather, an individual with a disability should request a reasonable accommodation when s/he knows that there is a workplace barrier that is preventing him/her, due to a disability, from effectively competing for a position, performing a job, or gaining equal access to a benefit of employment.⁽²³⁾ As a practical matter, it may be in an employee's interest to request a reasonable accommodation before performance suffers or conduct problems occur.

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

The employer and the individual with a disability should engage in an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation.⁽²⁴⁾ The employer may ask the individual relevant questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.⁽²⁵⁾

The exact nature of the dialogue will vary. In many instances, both the disability and the type of accommodation required will be obvious, and thus there may be little or no need to engage in any discussion. In other situations, the employer may need to ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation. While the individual with a disability does not have to be able to specify the precise accommodation, s/he does need to describe the problems posed by the workplace barrier. Additionally, suggestions from the individual with a disability may assist the employer in determining the type of reasonable accommodation to provide. Where the individual or the employer are not familiar with possible accommodations, there are extensive public and private resources to help the employer identify reasonable accommodations once the specific limitations and workplace barriers have been ascertained.⁽²⁶⁾

May an employer ask an individual for documentation when the individual requests reasonable accommodation?

Yes. When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his/her disability and functional limitations.⁽²⁷⁾ The employer is entitled to know that the individual has a covered disability for which s/he needs a reasonable accommodation.

Reasonable documentation means that the employer may require only the documentation that is needed to establish that a person has an ADA disability, and that the disability necessitates a reasonable accommodation. Thus, an employer, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation. This means that in most situations an employer cannot request a person's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation. If an individual has more than one disability, an employer can request information pertaining only to the disability that requires a reasonable accommodation.

An employer may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of functional limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation, employers should specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. The individual can be asked to sign a limited release allowing the employer to submit a list of specific questions to the health care or vocational professional.⁽²⁸⁾

As an alternative to requesting documentation, an employer may simply discuss with the person the nature of his/her disability and functional limitations. It would be useful for the employer to make clear to the individual why it is requesting information, i.e., to verify the existence of an ADA disability and the need for a reasonable accommodation.

Example A: An employee says to an employer, "I'm having trouble reaching tools because of my shoulder injury." The employer may ask the employee for documentation describing the impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities (i.e., the employer is seeking information as to whether the employee has an ADA disability).

Example B: A marketing employee has a severe learning disability. He attends numerous meetings to plan marketing strategies. In order to remember what is discussed at these meetings he must take detailed notes but, due to his disability, he has great difficulty writing. The employee tells his supervisor about his disability and requests a laptop computer to use in the meetings. Since neither the disability nor the need for accommodation are obvious, the supervisor may ask the employee for reasonable documentation about his impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities. The employer also may ask why the disability necessitates use of a laptop computer (or any other type of reasonable accommodation, such as a tape recorder) to help the employee retain the information from the meetings.⁽²⁹⁾

Example C: An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. The supervisor can ask the spouse to send in documentation from the employee's treating physician that confirms that the hospitalization was related to the multiple sclerosis and provides information on how long an absence may be required from work.⁽³⁰⁾

If an individual's disability or need for reasonable accommodation is not obvious, and s/he refuses to provide the reasonable documentation requested by the employer, then s/he is not entitled to reasonable accommodation.⁽³¹⁾ On the other hand, failure by the employer to initiate or participate in an informal dialogue with the individual after receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation.⁽³²⁾

May an employer require an individual to go to a health care professional of the employer's (rather than the employee's) choice for purposes of documenting need for accommodation and disability?

The ADA does not prevent an employer from requiring an individual to go to an appropriate health professional of the employer's choice if the individual provides insufficient information from his/her treating physician (or other health care professional) to substantiate that s/he has an ADA disability and needs a reasonable accommodation. However, if an individual provides insufficient documentation in response to the employer's initial request, the employer should explain why the documentation is insufficient and allow the individual an opportunity to provide the missing information in a timely manner. Documentation is insufficient if it does not specify the existence of an ADA disability and explain the need for reasonable accommodation.⁽³³⁾

Any medical examination conducted by the employer's health professional must be job-related and consistent with business necessity. This means that the examination must be limited to determining the existence of an ADA disability and the functional limitations that require reasonable accommodation.⁽³⁴⁾ If an employer requires an employee to go to a health professional of the employer's choice, the employer must pay all costs associated with the visit(s).

Are there situations in which an employer cannot ask for documentation in response to a request for reasonable accommodation?

Yes. An employer cannot ask for documentation when: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the individual has already provided the employer with sufficient information to substantiate that s/he has an ADA disability and needs the reasonable accommodation requested.

Example A: An employee brings a note from her treating physician explaining that she has diabetes and that, as a result, she must test her blood sugar several times a day to ensure that her insulin level is safe in order to avoid a hyperglycemic reaction. The note explains that a hyperglycemic reaction can include extreme thirst, heavy breathing, drowsiness, and flushed skin, and eventually would result in unconsciousness. Depending on the results of the blood test, the employee might have to take insulin. The note requests that the employee be allowed three or four 10-minute breaks each day to test her blood, and if necessary, to take insulin. The doctor's note constitutes sufficient documentation that the person has an ADA disability because it describes a substantially limiting impairment and the reasonable accommodation needed as a result. The employer cannot ask for additional documentation.

Example B: One year ago, an employer learned that an employee had bipolar disorder after he requested a reasonable accommodation. The documentation provided at that time from the employee's psychiatrist indicated that this was a permanent condition which would always involve periods in which the disability would remit and then intensify. The psychiatrist's letter explained that during periods when the condition flared up, the person's manic moods or depressive episodes could be severe enough to create serious problems for the individual in caring for himself or working, and that medication controlled the frequency and severity of these episodes.

Now, one year later, the employee again requests a reasonable accommodation related to his bipolar disorder. Under these facts, the employer may ask for reasonable documentation on the need for the accommodation (if the need is not obvious), but it cannot ask for documentation that the person has an ADA disability. The medical information provided one year ago established the existence of a long-term impairment that substantially limits a major life activity.

Example C: An employee gives her employer a letter from her doctor, stating that the employee has asthma and needs the employer to provide her with an air filter. This letter contains insufficient information as to whether the asthma is an ADA disability because it does not provide any information as to its severity (i.e., whether it substantially limits a major life activity). Furthermore, the letter does not identify precisely what problem exists in the workplace that requires an air filter or any other reasonable accommodation. Therefore, the employer can request additional documentation.

Is an employer required to provide the reasonable accommodation that the individual wants?

The employer may choose among reasonable accommodations as long as the chosen accommodation is effective.⁽³⁵⁾ Thus, as part of the interactive process, the employer may offer alternative suggestions for reasonable accommodations and discuss their effectiveness in removing the workplace barrier that is impeding the individual with a disability.

If there are two possible reasonable accommodations, and one costs more or is more burdensome than the other, the employer may choose the less expensive or burdensome accommodation as long as it is effective (i.e., it would remove a workplace barrier, thereby providing the individual with an equal opportunity to apply for a position, to perform the essential functions of a position, or to gain equal access to a benefit or privilege of employment). Similarly, when there are two or more effective accommodations, the employer may choose the one that is easier to provide. In either situation, the employer does not have to show that it is an undue hardship to provide the more expensive or more difficult accommodation. If more than one accommodation is effective, "the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations."⁽³⁶⁾

Example A: An employee with a severe learning disability has great difficulty reading. His supervisor sends him many detailed memoranda which he often has trouble understanding. However, he has no difficulty understanding oral communication. The employee requests that the employer install a computer with speech output and that his supervisor send all memoranda through electronic mail which the computer can then read to him. The supervisor asks whether a tape recorded message would accomplish the same objective and the employee agrees that it would. Since both accommodations are effective, the employer may choose to provide the supervisor and employee with a tape recorder so that the supervisor can record her memoranda and the employee can listen to them.

Example B: An attorney with a severe vision disability requests that her employer provide someone to read printed materials that she needs to review daily. The attorney explains that a reader enables her to review substantial amounts of written materials in an efficient manner. Believing that this reasonable accommodation would be too costly, the employer instead provides the attorney with a device that allows her to magnify print so that she can read it herself. The attorney can read print using this device, but with such great difficulty it significantly slows down her ability to review written materials. The magnifying device is ineffective as a reasonable accommodation because it does not provide the attorney with an equal opportunity to attain the same level of performance as her colleagues. Without an equal opportunity to attain the same level of performance, this attorney is denied an equal opportunity to compete for promotions. In this instance, failure to provide the reader, absent undue hardship, would violate the ADA.

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

An employer should respond expeditiously to a request for reasonable accommodation. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible.⁽³⁷⁾ Similarly, the employer should act promptly to provide the reasonable accommodation. Unnecessary delays can result in a violation of the ADA.⁽³⁸⁾

Example A: An employer provides parking for all employees. An employee who uses a wheelchair requests from his supervisor an accessible parking space, explaining that the spaces are so narrow that there is insufficient room for his van to extend the ramp that allows him to get in and out. The supervisor does not act on the request and does not forward it to someone with authority to respond. The employee makes a second request to the supervisor. Yet, two months after the initial request, nothing has been done. Although the supervisor never definitively denies the request, the lack of action under these circumstances amounts to a denial, and thus violates the ADA.

Example B: An employee who is blind requests adaptive equipment for her computer as a reasonable accommodation. The employer must order this equipment and is informed that it will take three months to receive delivery. No other company sells the adaptive equipment the employee needs. The employer notifies the employee of the results of its investigation and that it has ordered the equipment. Although it will take three months to receive the equipment, the employer has moved as quickly as it can to obtain it and thus there is no ADA violation resulting from the delay. The employer and employee should determine what can be done so that the employee can perform his/her job as effectively as possible while waiting for the equipment.

May an employer require an individual with a disability to accept a reasonable accommodation that s/he does not want?

No. An employer may not require a qualified individual with a disability to accept an accommodation. If, however, an employee needs a reasonable accommodation to perform an essential function or to eliminate a direct threat, and refuses to accept an effective accommodation, s/he may not be qualified to remain in the job.⁽³⁹⁾