

ADA ONLINE
LEARNING

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Legal Issues Webinar Series**

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 **ADA National Network**
Advancing, Customizing and Promoting the
Inclusion of People with Disabilities

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Customize Your View *continued*



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 2. Email adaconferences@adagreatlakes.org; or
 3. Call 877-232-1990 (V/TTY)

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Reasonable Accommodations in Employment: A General Update with Emphasis on Leave and Reassignment

Brian East, Senior Attorney
Disability Rights Texas
March 20, 2013

Two parts to many ADA employment cases:

- “Disability”
- “Qualified”

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Changes to ADA make accommodation even more important:

- ADA Amendments Act expands definition of “disability”
- More cases will now be decided on the issue of “qualified”
- “Qualified” means able to perform essential job functions with or without reasonable accommodation

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Identifying Accommodations—the Interactive Process

- Employer & employee should engage in “flexible interactive process”
- Employer’s obligation normally triggered by accommodation request
- Courts often rule in favor of party who engaged in process in good faith, and against party who didn’t.

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Leave as a Reasonable Accommodation

- Widely recognized, and one of the most important accommodations
- Generally reasonable, but details may raise “undue hardship” defense

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Defense of Undue Hardship

- Need not make accommodation that would be undue hardship
- Undue hardship means significant difficulty or expense
- Factors include cost, overall financial resources, operation, impact
- This is a fact-specific defense based on individualized assessment

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Length of Leave

- No hard and fast rules as to length
- Courts have approved leave of various lengths
- Case example: Very large employer with high turnover and fungible employees; very lengthy duration could be reasonable if employee easily replaceable without significant expenses.

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Leave in Excess of FMLA or Company Policy

- Leave usually clear if consistent with policy or with FMLA
- But accommodation may require deviation from company policy
- Many courts and EEOC recognize that extra, unpaid leave may be required.

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Leave Requests for Employees to Avoid

- Many courts do not require indefinite leave
- Employees should avoid asking for indefinite leave
- Better to provide return-to-work date
- But absolute certainty not required.

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Response to Leave Requests for Employers to Avoid

- Fixed-leave policies are subject to challenge.
- Don't claim that medical inexactness is indefinite leave
- Don't refuse chance for employee to get return-to-work date

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Common Alternatives to Traditional Leave

- Reasonable periods of part-time status or light duty;
- Schedule changes and flexibility;
- Telecommuting.

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Other Reasonable Accommodations - Examples

<ul style="list-style-type: none"> • Temporary light duty; • Rest & recovery breaks between assignments; • Excusing employee from the need to move between buildings; • Allowing work from a seated position; • Providing lifting assistance or lifting devices; • Additional training or instructions; • A job coach; • Limiting rotations to other posts; • Limiting overtime; • Help in the application process; 	<ul style="list-style-type: none"> • Allowing access to diabetes supplies; • Allowing naps at lunch break; • Providing sign-language interpreters for meetings and trainings; • Providing a reserved parking space; • Providing an ergonomic keyboard; • Providing a raised seat and grab bars in the restroom; • Providing a glare-guard or one-handed keyboard for computer; • Adjusting desk or shelf height.
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Reassignment as Reasonable Accommodation

- Generally do not have to permanently excuse "essential" job functions
- Is there accommodation that would allow performing those functions
- If not, employer must consider reassigning to vacant position
- Remember that:
 - Reassignment need not be promotion;
 - Reassignment generally doesn't require bumping
 - Parties should work together to identify vacant positions;
 - EEOC and recent case law say actual placement required, not just allowing employee to compete.

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More Things for *Employer* to Avoid

- Ignoring or failing to respond to accommodation requests;
- Delay in accommodating;
- Resisting in face of obvious need;
- Offering accommodation that didn't work, with no follow-up;
- Firing instead of accommodating;
- Claiming "misunderstanding" when request is clear.

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More Things for *Employee* to Avoid

- Failing to providing reasonable medical information to the employer;
- Breaking off the process prematurely by resigning;
- Failing to contact employer to request leave or other accommodation.

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Questions?

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Today's Session

Please join us for the next session in this series:
May 8, 2013

The ADA In the Hospitality Setting
Barry Taylor, Equip for Equality



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the session with a link to the
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