

Reasonable Accommodations: Workplace Supports for People with Disabilities

ADAONLINE WEBINAR SERIES

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Session Agenda/Goals

- Discuss ADA provisions for reasonable accommodation for applicants and employees with disabilities
- Identify practical strategies for the provision of accommodations
- Provide accommodation resources
- Answer your questions

Accommodation Basics

Reasonable Accommodations

- Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities
- *Equal employment opportunity: opportunity to attain same level of performance or to enjoy equal benefits and privileges of employment*

When Can Accommodations Be Requested?

- Application process
- Performance of the essential functions of the position
- Enjoyment of equal benefits and privileges of employment

Accommodation Basics

- Must be an effective accommodation
- Need not be *best* accommodation, just *effective*
- Must only reduce employment-related barriers
- Personal devices not required
- Individuals covered solely under the “regarded as” prong NOT entitled to accommodations
- Employer not prevented from providing extra accommodations

Reasonable...

- Making modifications to increase facility accessibility
- Job restructuring
- Flexible scheduling
- Acquiring new equipment
- Providing qualified readers and interpreters
- Modification of application and testing procedures and training materials

...Not so much!

- Eliminating essential job functions
- Lowering production standards applied to all employees
- Providing personal use items
- Changing an employee's supervisor
- Excusing violation of uniformly applied conduct rules
- Undue hardship

The RA Challenge

Challenge #1

Janice has been a counselor with a local school district for 26 years. She often does clinical work with students with emotional/behavioral disabilities. Over the last several years, the district has upgraded several computer systems she regularly uses in her position. Janice is blind and tells the district these upgrades are inaccessible to her. She's unable to enter student progress notes, apply for promotions within the school district, or access her employee benefits information. She requests accommodation.

Reasonable request or no?

Challenge #2

Luis applies for a driving position with a national trucking conglomerate. He passes the required commercial drivers' license course and is otherwise qualified for the position. He's a Navy veteran and discloses during the hiring process that he has PTSD and uses a service animal to assist with his disability. He was not offered the position because the company has a "no pet" policy.

Did the trucking company make a mistake in the hiring decision?

The Accommodation Process

Basic Roles & Responsibilities

EMPLOYEES

- Request/disclose
- Provide documentation
- Participate in the process

EMPLOYERS

- Verify need
- Maintain confidentiality
- Participate in the process

The Interactive Process: Questions to Cover

- What are the specific essential functions the employee is unable to perform?
- What ideas does the employee have for accommodations?
- What documentation do you need to verify the need for accommodation?
- What accommodation will be effective?

The Interactive Process: Outcomes

- Facilitate a negotiation resulting in mutual agreement
- Explain what accommodation the employer is able and willing to provide
- Inform the employee about the employer's inability to provide a reasonable accommodation due to undue hardship

Provision of Accommodations

- Develop expertise – know your accommodation resources
- Streamline the process
- Clarify sources of funding
- Centralize tracking and reporting
- Clarify who has a role in the process
- Maintain confidentiality
- Coordinate communication with employee

Role of the Supervisor

People are 60% more
likely to disclose to
their supervisor

- Nishi & Bruyere, 2014

Engaging Supervisors

- Because of role, key gatekeepers of disability inclusiveness in the workplace
- Make sure managers and supervisors recognize RA requests
- Training is key!
- Importance of bringing new managers up-to-speed on accommodations already in place

Documentation

- Describe why documentation is needed (i.e., to verify existence of disability and need for accommodation)
- Identify the types of professional who can provide documentation
- Describe the type of information needed in the documentation
 - ▶ Has a covered disability
 - ▶ Functional limitations that the person experiences because of the disability
 - ▶ Suggested accommodations in the workplace
- If the information provided does not clarify, employer may send to professional of their choice

Confidentiality

- Strict legal limitations on use of medical information
- All medical information kept in file separate from personnel records
- Share medical information only on an as-needed basis
- Includes sharing information with coworkers

RA Implementation

- Should not be held up by overly burdensome documentation process
- Provide training on the provided accommodation, if necessary
- Consider implementing a centralized funding mechanism
- Monitor implementation of the accommodation at regular intervals
 - Explore options if first accommodation is unsuccessful
- Document RA implementation process
- Keep in mind that RA responsibilities are ongoing

The RA Challenge, Part 2

Challenge #3

Joan is a cashier at a major big box retail store. The store policy states that all cashiers must stand at the cash register during shifts. Joan begins to experience severe fatigue and pain in her knees. She is diagnosed with rheumatoid arthritis and requests to use a stool for a portion of her shift. The request is granted. Other employees start to grumble about the preferential treatment that Joan is receiving.

How should the cashier supervisor handle the situation?

Coworker Resentment

- When asked about accommodations:
 - ▶ Acting for legitimate business reasons
 - ▶ Acting in compliance with federal, state, and local labor laws
 - ▶ Tries to support the needs of all employees
- Clearly communicate to coworkers that accommodation is not preferential treatment
- When possible, extend certain accommodations to all employees

Common Barriers to Accommodation

Barrier 1

- Making assumptions about a diagnosis
 - Listen to the employee about his/her functional limitations
 - Avoid detailed and lengthy discussion of diagnosis
 - Be effective in dealing with both obvious and hidden disabilities
 - Reserve your personal judgments and opinions about the condition

Barrier 2

- Focusing too quickly on leave or reassignment before other accommodations are considered
- When possible, focus on accommodations that keep the person engaged in work
 - Flex time
 - Telecommuting
 - Job sharing

Barrier 3

- Stopping the interactive process because you believe no RA would enable the employee to perform the essential functions
- Options:
 - Working part time
 - Reassignment
 - Leave of absence

Barrier 4

- Assuming a job function is essential simply because the supervisor says it is
- Factors to consider:
 - Job description
 - Frequency & importance of the task
 - Are others available to perform the task?
 - Do other employees in the same position perform the task?
 - If possible, consider a job analysis

Barrier 5

- Accommodation isn't properly deployed
 - Consider what time, training, and adjustments might be needed to implement RA effectively
 - Discuss next steps and expectations
 - Monitor effectiveness of accommodation

Other Barriers

- Sharing with managers (or coworkers) all the specifics about an employee's impairment
- Being too reasonable by eliminating essential functions
- Inconsistency in enforcing policies and standards
- Not creating an atmosphere of trust/ignoring the human element of disability in the workplace

A Few More

- Eliminating accommodations because "things have changed and we can't do it anymore"
- Considering performance in deciding whether a request is reasonable
- Failing to engage in the interactive process because the employee request doesn't include specific ideas
- Defining undue hardship too broadly

Accommodation Financial Issues

Accommodation Facts

- Estimates suggest over 70% of employees with disabilities never request an accommodation
- Cost effectiveness: 59% of employers reporting cost data paid nothing*
- Average one-time cost: \$500 (\$200 for employee without disability)*
- 75% of employers report that accommodations are very or extremely effective*

*Job Accommodation Network (Original 2005, Updated 2018). *Accommodation and Compliance: Low cost, high impact*. Retrieved May 2019, from <https://askjan.org/topics/costs.cfm>

Undue Hardship

- Action that requires significant difficulty or expense - unduly costly, extensive, substantial, disruptive, fundamentally alters nature or operation of business
- In relation to size of the employer, resources available, nature of the operation
- Must be determined on a case-by-case basis
- **IMPORTANT:** Consider alternate accommodations that do not create undue hardship

Accommodation Resources

National Network of ADA Centers



- Funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), the network consists of ten Regional ADA Centers located throughout the United States and an ADA Knowledge Translation Center (ADAKTC).
- The ADA National Network provides information, guidance and training on how to implement the ADA
- Contact information
 - Toll free hot line - 800-949-4232 (voice/TTY)
 - Web site - www.adata.org

Key Organizations

- Job Accommodation Network 800/526-7234 (V, TTY) www.askjan.org
- Equal Employment Opportunity Commission 800/669-4000 (V) www.eeoc.gov
- Department of Labor's Office of Disability Employment Policy www.dol.gov/odep/
- Cornell University Employment & Disability Institute www.hrtips.org

A Few Publications...

- EEOC's Reasonable Accommodation & Undue Hardship Under the ADA
<http://www.eeoc.gov/policy/docs/accommodation.html>
- JAN's Employers' Practical Guide to RA
<http://askjan.org/Erguide/>
- JAN's Sample RA Form for Employers
<http://askjan.org/media/raemployersform.htm>
- Cornell's Reasonable Accommodations Under the ADA
http://www.ilr.cornell.edu/edi/hr_tips/download.cfm?prod_id=81

Questions?



Jana Burke, PhD, ADAC

Mariposa Professional Services

PO Box 7774

Colorado Springs, CO 80933

719/229-0629

jburkeinco@gmail.com

