

Reasonable Accommodations: Workplace Supports for People with Disabilities

ADAONLINE2020 WEBINAR

OCTOBER 29, 2020



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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



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Accommodation Basics



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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*



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When Can Accommodations Be Requested?

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



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Accommodation Basics

- Must be an effective accommodation
- Need not be *best* accommodation, just *effective*
- Must only reduce employment-related barriers
- Employer not prevented from providing extra accommodations



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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



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...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



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The Accommodation Process



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Basic Roles & Responsibilities

EMPLOYEES

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

EMPLOYERS

- Verify need
- Maintain confidentiality
- Participate in the process



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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?



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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



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Provision of Accommodations

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



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Role of the Supervisor

**People are 60% more
likely to disclose to
their supervisor**

- Nishi & Bruyere, 2014



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Engaging Supervisors

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



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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



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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
- Privacy issues & COVID-19



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RA Implementation

- Don't get bogged down with an overly burdensome documentation process!
- Provide training on the provided accommodation, if necessary
- 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



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Common Issue: Coworker Resentment

- If 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



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Accommodations & COVID-19



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Intersection Between ADA Rights & COVID-19

- Three main areas:
 - Disability-related inquiries and medical exams
 - Confidentiality and privacy
 - ***Reasonable accommodations***



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RA Issues re: COVID

- Personal protective equipment (PPE)
- Protecting at-risk applicants and employees
- Interactive process
- Temporary accommodations
- Modifications to RA when returning to the workplace
- Telework as an accommodation



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A Few Publications...

- EEOC's [What You Should Know about COVID-19 and the ADA, the Rehab Act, and Other EEO Laws](#)
- EEOC's [Pandemic Preparedness in the Workplace and the ADA](#)
- EARN's [COVID-19 and Job Applicants and Employees with Disabilities](#)



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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



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Financial Facts

- Estimates suggest over 70% of employees with disabilities never request an accommodation
- Cost effectiveness: 58% of employers reporting cost data paid nothing*
- Average one-time cost: \$500 (\$400 for employee without disability)*
- 74% of employers report that accommodations are very or extremely effective*

*Job Accommodation Network (Original 2005, Updated 2020). *Accommodation and Compliance: Low cost, high impact*. Retrieved Oct 2020, from <https://askjan.org/topics/costs.cfm>



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Accommodation Resources



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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



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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



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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



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Questions?

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This concludes the current series of session offered through the ADAOnline2020 Series. Watch your email for announcement of future sessions

All sessions offered since September 2020 have been archived at www.adaonline2020.org

The attendance is being updated for the latest sessions and everything should be posted by November 8th so check your accounts at that time

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