

NORTHERN WESTMORELAND CAREER & TECHNOLOGY CENTER

ADMINISTRATIVE
REGULATION

347-AR-4. RESPONDING TO REQUESTS FOR ACCOMMODATION

An employee can request reasonable accommodations to enable the employee to perform his/her work. Under the Americans with Disabilities Act, the center has a duty to provide reasonable accommodations to qualified individuals with a disability as long as those accommodations do not constitute an undue hardship for the center.

Center employees should recognize when a request for an accommodation is being made. Virtually any statement by an employee or his/her representative, including a physician, that would reasonably lead the center to know that a request is being made (such as a request for help, assistance or even a leave of absence) should be interpreted as a request for accommodation.

To respond in a proper and legal manner, the center must address numerous issues. First, it must be determined whether the individual is a qualified individual with a disability as defined in the ADA. If the individual is not a qualified individual with a disability as defined, the center is not obligated to provide any accommodations. Second, if it is determined that the individual is a qualified individual with a disability, then it must be determined what substantial limitations exist. Third, once it is determined what substantial limitations exist, it must then be determined what accommodations are available and are reasonable in order to overcome those limitations. Next, it must be determined what the essential functions of the employee's job are. The only accommodation that is required is providing reasonable accommodations that enable a qualified individual with disabilities to perform the essential functions of the job. These issues are to be addressed and determined through a process referred to as an interactive process. If the center fails to engage in the interactive process, the employer has violated the ADA if the center refuses to provide the accommodations requested by the employee and it is later determined that the employee is a qualified individual with a disability. Each of these questions involves significant legal analysis, and legal counsel should be contacted.

The ADA defines the term qualified individual with a disability as an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

The term disability is defined as a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. Under the first clause of this definition, in order to be disabled, a person must have a physical or mental impairment and that impairment must substantially limit a major life activity. Under applicable regulations and guidance statements from the Equal Employment Opportunity Commission, an impairment means any physiological

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disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs, which would include speech organs that are not respiratory such as vocal cords, soft palate, tongue, etc.; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine. It also means any mental or psychological disorder, such as mental retardation, organic brain system, emotional or mental illness, and specific learning disabilities.

If there is a substantial limitation, the impairment must be one that substantially limits a major life activity. Major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

The determination of whether a specific impairment substantially limits a major life activity cannot be made taking into consideration measures utilized to lessen the effect of the impairment. For example, mitigating measures, such as medication, medical supplies, equipment or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics, hearing aides and cochlear implants or other implantable hearing devices, mobility devices and oxygen therapy equipment or supplies, cannot be factored into the substantially limits determination. Impairments that are episodic or in remission will be considered disabilities if they substantially limit a major life activity when active.

Employees who suffer adverse employment actions and believe they were “regarded as” disabled because of an actual or perceived impairment are not covered by the ADA if their impairment is transitory and minor. A “transitory impairment” is defined as an impairment with an actual or expected duration of six (6) months or less. Employers are not required to provide reasonable accommodations to those employees who are regarded as disabled.

Center staff will comply with the federal regulations and enforcement guidelines applicable to the ADA.

The center must determine if the employee is qualified. The first step is to determine if the individual satisfies the prerequisites for the position, such as possessing the appropriate educational background, employment experience, skills, licenses, etc. Once it is determined that the individual possesses the necessary education, experience, skills and licenses, the second step is to determine whether the individual can perform the essential functions of the position held or desired, with or without reasonable accommodations. If the individual is unable to perform the essential functions of the job with or without reasonable accommodations, then the individual is not a qualified individual with disabilities.

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The center must identify what the essential functions of the position are. To do this, the center must take into account certain basic propositions. First, a listing of essential functions is different than a job description. According to the advice provided by EEOC, the inquiry whether a particular function is essential initially focuses on whether the employer actually requires employees in the position to perform the function. If, for example, the employer states that typing is an essential function, but the employer has never required any employee in that position to type, the evidence would suggest that typing is not actually an essential function. Another inquiry is whether the removal of the function from the list would fundamentally alter the position. The EEOC outlines the following factors for determining whether a task is an essential function:

1. The first factor is whether the position exists to perform a particular function. For example, an individual might be hired to proofread documents. The ability to proofread the document would be an essential function since this is the only reason the position exists.
2. The second factor is the number of other employees available to perform that job function or among whom the performance of that function can be distributed. This may be a factor either because the total number of available employees is low, or because of the fluctuating demands of the business operation. For example, if an employer has a relatively small number of available employees for the volume of work to be performed, it may be necessary that such employees perform a multitude of different functions. Therefore, the performance of these functions by each employee becomes more critical, and the options for reorganizing the work become more limited. In such a situation, functions that might not be essential if there were a larger staff may become essential because the staff size is small compared to the volume of work that has to be done.
3. A third factor is the degree of expertise or skill required to perform the function. In certain professions and highly skilled positions the employee is hired for his/her expertise or ability to perform the particular function. In such a situation, the performance of that specialized task would be an essential function.

Whether a particular function is essential is a factual determination that must be made on a case-by-case basis. In determining whether or not a particular function is essential, all relevant evidence should be considered.

The time spent performing the particular function may also be an indicator of whether that function is essential. For example, if an employee spends the vast majority of his/her time working at a cash register, this would be evidence that operating the cash register is essential. The consequences of failing to require the employee to perform the function may be another indicator of whether a particular function is essential. For example, although a firefighter may not regularly have to carry an unconscious adult out of the burning building, the consequence of failing to require the firefighter to be able to perform the function would be serious.

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Interactive Process

In order to determine what accommodations are reasonable, the EEOC and the Courts require the employer and the employee to engage in an interactive process. The guidance provided by EEOC states:

The determination of which accommodation is appropriate in a particular situation involves a process in which the employer and employee identify the precise limitations imposed by the disability and explore potential accommodations that would overcome those limitations. The appropriate reasonable accommodation is best determined through a flexible, interactive process that involves both the employer and the qualified individual with a disability. Although the process is described below in terms of accommodations that enable the individual with a disability to perform the essential functions of the position held or desired, it is equally applicable to accommodations involving the job application process, and to accommodations that enable the individual with a disability to enjoy equal benefits and privileges of employment.

When a qualified individual with a disability has requested a reasonable accommodation to assist in the performance of a job, the employer, using a problem solving approach, should:

1. Analyze the particular job involved and determine its purpose and essential function.
2. Consult with the individual with the disability to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation.
3. Identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position, in consultation with the individual to be accommodated.
4. Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.

Based on this guidance, when an employee requests an accommodation, center staff will immediately do the following:

1. Contact the school solicitor or labor counsel.
2. Send a letter to the employee; use 347-AR-2.
3. Engage the employee in the interactive process, evaluate the facts, and make required determinations.