

The logo consists of a stylized, overlapping 'A' and 'C' in red and black, positioned to the left of the text.

# Advocacy Center for Persons with Disabilities, Inc.

## Florida's Protection and Advocacy Program



### REASONABLE ACCOMMODATIONS IN THE WORKPLACE, THE AMERICANS WITH DISABILITIES ACT, AND EMPLOYEE RIGHTS AND RESPONSIBILITIES!

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REASONABLE ACCOMMODATIONS IN THE WORKPLACE, THE AMERICANS WITH DISABILITIES ACT,  
AND EMPLOYEE RIGHTS AND RESPONSIBILITIES!

TABLE OF CONTENTS

A. QUESTIONS ON THE AMERICANS WITH DISABILITIES ACT  
(ADA).....3

B. QUESTIONS ON REQUESTING A REASONABLE ACCOMMODATION.....5

C. QUESTIONS ON THE PROCESS AFTER REQUESTING A REASONABLE  
ACCOMMODATION.....8

D. QUESTIONS ON TYPES OF ACCOMMODATIONS.....10

E. QUESTIONS ON REQUESTS DENIED BY THE EMPLOYER .....11

F. QUESTIONS ON ENFORCING YOUR RIGHTS UNDER THE ADA.....12

A. QUESTIONS ON THE AMERICANS WITH DISABILITIES ACT  
(ADA)



What is the ADA?

In 1991, Congress passed The Americans with Disabilities Act (ADA) because more than 43 million Americans were found to have one or more physical or mental disabilities. The number of Americans with disabilities continues to grow. Congress found that society historically isolated, segregated, and discriminated against individuals with disabilities in critical areas like employment, housing, public accommodations, and transportation. So, Congress intended for the ADA to serve as a clear and national prohibition against discrimination against individuals with disabilities.

The ADA is comprised of five titles. Title I is designed to address and remove barriers to employment so individuals with disabilities can enjoy the same employment opportunities as people without disabilities. Title II prohibits a public entity from either excluding an individual from participating in or denying the individual the benefits of public services and programs. Title III prohibits any private entity, which owns, operates, or leases a public place, from denying an individual equal enjoyment of goods, services, facilities, advantages, or accommodations of any public accommodation. Title IV regulates Telecommunication services for hearing and speech-impaired individuals. Title V contains thirteen miscellaneous provisions that include a section on prohibition on retaliation and coercion, use of illegal drugs, and attorney fees.



Who does Title I of the ADA protect ?

The ADA protects qualified individuals with a disability from being subjected to discrimination in regards to advancement, discharge, employee compensation, job training, job application, hiring, or other conditions of the individual's employment. However, only employers who have 15 or more employees for each working day in 20 or more calendar weeks are subject to the ADA. These employers include private

REASONABLE ACCOMMODATIONS IN THE WORKPLACE, THE AMERICANS WITH DISABILITIES ACT,  
AND EMPLOYEE RIGHTS AND RESPONSIBILITIES!

businesses and state and local government, but does not include the United States.



*If I am disabled, can I be considered a qualified individual with a disability under the ADA?*

Yes, if the individual has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or being regarded as having such an impairment. The individual's impairment should limit their ability to perform activities that an average person can do with little or no difficulty. These activities would be major tasks like walking, talking, breathing, learning, caring for oneself, performing manual tasks, seeing, hearing, and working. An individual's limitations can be considered substantial when considering the nature, severity, duration, and long term impact of the impairment. Generally, the name of the impairment or condition does not determine if an individual is a qualified individual with a disability, but whether the impairment or condition affects one or more major life activities in a significant way.

Melissa was in a motor vehicle accident which resulted in back problems. She was diagnosed with having several herniated discs and lumbar disc disease. She has lived with moderate back pain for 1 year but can still walk and stand without aid. Melissa would not be a qualified individual with a disability because her condition does not limit her ability to walk or stand in a substantial way.

For those individuals who have a record of or regarded as having a physical or mental impairment, they can be considered disabled because of the attitudes and perceptions of their employer. An individual can be regarded as disabled if their employer treats their impairments as limitations even though the individual's impairment is not substantially limiting.

Joey has mild retardation. He has worked as a grocery bagger for 1 year at the local grocery store and applied for a Stock Associate position. Joey received good reviews for his performance as a bagger. However, the store manager refused to interview Joey for the Stock Associate position because he believed Joey would be unable to read the labels and know

REASONABLE ACCOMMODATIONS IN THE WORKPLACE, THE AMERICANS WITH DISABILITIES ACT,  
AND EMPLOYEE RIGHTS AND RESPONSIBILITIES!

where to put the items. Joey would be regarded as a qualified individual with a disability because the store manager assumed Joey would be unable to perform the duties for the Stock Associate position since he has mild retardation.

◆ Are there any other requirements I must meet to be considered a qualified individual with a disability?

Yes, the individual must also have the skills, experience, education and other job-related requirements of the job the individual holds or desires *and* can perform the essential duties of that position. The individual must meet the basic skills necessary to be qualified for the job. The individual must also be able to perform those job duties which are considered to be essential or important to the individual's position either unaided or with an accommodation.

After a motor vehicle accident, Jan's vision became impaired so she uses a service animal to help her perform daily living activities. She attended Z University and graduated with a Bachelors degree in education and computer science. She is now certified by the State Board of Teaching Professionals to teach computers in all primary and secondary schools. Jan teaches computer science to 10<sup>th</sup> grade students at the ABC Public High School. Jan needs a computer assistive device to help her read the computer screen to her students. Jan would be a qualified individual because she meets the basic requirement for teaching high school and computer science. She would also be able to perform her job duties as a computer science teacher if ABC Public High School provides her with a screen reader device.

◆ I work for a small business that only has 10 employees including me, does the ADA apply to me?

No. Generally, the ADA only applies to employers with 15 or more employees whose business affects commerce. An individual who works for businesses with less than 15 employees may have employment rights under state or local laws.

B. QUESTIONS ON REQUESTING A REASONABLE ACCOMMODATION

◆ What does reasonable accommodation mean?

REASONABLE ACCOMMODATIONS IN THE WORKPLACE, THE AMERICANS WITH DISABILITIES ACT,  
AND EMPLOYEE RIGHTS AND RESPONSIBILITIES!

A reasonable accommodation means making a reasonable change to the work environment, or the way a position is customarily performed. The

reasonable accommodation should assist the qualified individual with a disability in performing the essential duties of their job. All requests for an accommodation are not automatically reasonable.

David is paraplegic with very limited hand and finger coordination and has a personal care attendant (PCA). David works as a program analyst for a local government office which requires a lot of phone contact and typing. David requests his PCA be allowed to assist him in contacting individuals and typing reports. David's PCA would be a reasonable accommodation because David's use of the PCA changes how his job is performed and assists him with the essential duties.

A reasonable accommodation also means making a change so a qualified individual with a disability can enjoy the benefits and privileges of employment as similar employees.

Lisa is the retail manager for a large retail business. She is invited to attend and participate, as time permits, in quarterly meetings conducted by teleconference. Lisa is hearing impaired and has requested the retailer provide video relay so she can follow the discussions. Video relay is one example of a reasonable accommodation which Lisa can use to be a full participant in management meetings.

◆ What job duties are considered essential?

Generally, there can be different factors used to determine how essential an individual's job duties are to their particular position. Examining the nature of the position can be one way to identify essential duties. An individual can also consider whether their job duties are specialized, or the number of employees who perform those same duties, or the amount of time spent on certain duties, to determine which duties are essential. Job descriptions and the employer's assessment are additional resources that can provide evidence of an individual's essential job duties.

◆ I work part-time, can I request a reasonable accommodation?

REASONABLE ACCOMMODATIONS IN THE WORKPLACE, THE AMERICANS WITH DISABILITIES ACT,  
AND EMPLOYEE RIGHTS AND RESPONSIBILITIES!

Yes. A qualified individual with a disability can request a reasonable accommodation regardless of their work status as full-time, part-time, temporary, or probationary.

◆ How should I tell my employer that I need a reasonable accommodation?

The employer is only obligated to provide reasonable accommodations for known disabilities. A qualified individual with a disability is responsible for informing their employer when their disability impacts the individual's ability to perform their essential job duties. A request for a reasonable accommodation can be made verbally or in writing but the individual does not need to use any "buzz words or phrases." The request should be clear enough to inform the employer of the disability, how the disability impacts performing essential job duties, and what changes would help the qualified individual with a disability perform their job.

◆ Can I request a reasonable accommodation if I am applying for a job?

Yes, an individual who is a qualified applicant with a disability can request a reasonable accommodation to assist them with the hiring process. The employer is obligated to provide those accommodations reasonable for a qualified applicant with a disability to fully participate in the process. The applicant is responsible for informing the prospective employer of this need (e.g. extra test time, larger font materials, etc). The employer is obligated to provide a reasonable accommodation to a qualified applicant without regard to whether the applicant will need the same, different, or no reasonable accommodation for the position desired.

Darnell wants to apply for a financial position with Fourth National Bank (FNB). FNB requires all applicants complete an application to be considered for a vacant position. Darnell is blind and requests an application in braille. FNB does not have any applications in braille but offers to have a FNB employee write down Darnell's answers to the questions on the application. The FNB employee who will assist Darnell with completing the application is an example of a reasonable accommodation.

◆ If I have not requested a reasonable accommodation, can I be asked if one is needed?

Generally, an employer may not ask an individual if an accommodation is needed. However, if the individual's need for a reasonable accommodation is obvious or the individual discloses their disability, then the employer may ask whether an accommodation is necessary if it

believes a reasonable accommodation will be necessary to perform specific job duties.

◆ *Can someone in my family ask for an accommodation for me?*

Yes, a family member, friend, or even an individual's doctor can make a request on behalf of the qualified individual with a disability.

C. QUESTIONS ON THE PROCESS AFTER REQUESTING A REASONABLE ACCOMMODATION

◆ *My employer asked for documentation to support my request, is that allowed?*

Yes, if an individual's disability and need for an accommodation is not obvious or when the individual's documentation is insufficient to support the request for a reasonable accommodation. The employer may request additional documentation that supports the individual has an ADA disability or the reasonable accommodation is linked to a functional limitation. The employer can only request medical records related to an individual's medical diagnosis or condition, those functional limitations which impair their job duties, and the need for the requested accommodation. The employer cannot require an individual submit their entire medical history.

Barbara is the lead sales associate for XYZ Corporation. Barbara requests a third 15 minute break, in addition to her lunch hour, to be taken the same time every work day. According to her doctor, Barbara must take a fifteen minute nap at 2:00p.m., every day, to reduce the number and severity of epileptic seizures. Barbara has never had an epileptic seizure at work nor has she disclosed she was diagnosed with epilepsy. XYZ Manager asks Barbara to complete a company ADA request form and provide medical documentation from her doctor. XYZ can request Barbara submit medical records to support her medical diagnosis and need for the 15 minute break but XYZ cannot request a copy nor ask about her entire medical history.

◆ *After I request a reasonable accommodation, will I get to discuss it with my employer?*

An employer should initiate an interactive process to discuss the request for a reasonable accommodation when the reason for the request or the effectiveness of an accommodation is not obvious. This process is a way for the employer and the qualified individual with a disability to review the individual's ADA disability and those functional limitations which create a barrier in the workplace. The employer should use this process to clarify any questions about the individual's needs. The employer and the qualified individual with a disability can also use this process to discuss all reasonable accommodations that would be effective without being an undue hardship to the employer.

◆ *How long should I give my employer to give me an answer to my request for a reasonable accommodation?*

Although there is no set time limit, an employer is obligated to consider the request for a reasonable accommodation within a reasonable time. Reasonable time may depend on factors like whether the need for a reasonable accommodation is obvious, or if additional information is necessary to review the request, or if the employer and the qualified individual with a disability are engaged in an interactive discussion about the request. The qualified individual should consult with the employer to determine when to expect a decision on their request.

◆ *I receive SSDI and SSI so will my benefits be affected if my employer provides a reasonable accommodation?*

The Social Security Administration (SSA) definition of disability does not consider an individual's ability to work with a reasonable accommodation. An individual may be considered disabled for SSDI or SSI benefits even though an individual works by using a reasonable accommodation. Individuals who receive SSDI or SSI benefits should consult SSA about the impact of working with a reasonable accommodation on their benefits.

D. QUESTIONS ON TYPES OF REASONABLE ACCOMMODATIONS

◆ *What type of reasonable accommodation can I request?*

There are many different ways a qualified individual with a disability can modify their worksite or the manner in which a job is performed. Some examples are job restructuring, adjusting shift arrival and departure times, allowing flexible use of unpaid leave, modification in workplace policies, or use of assistive devices which would effectively eliminate a workplace barrier.

Jessica has been diagnosed with major depressive disorder. Due to this disorder, she lacks focus and concentration particularly in the mornings so she must take the city bus to get to work. Jessica is a Dental Hygienist and works for a dental office which sees patients at 9:00am. Jessica's main duty requires preparing each dental station which she can do in 15 minutes. When Jessica takes the bus, she arrives to work 15 minutes late. Jessica requests her shift began at 8:15am instead of 8:00am to accommodate her later arrival.

Thomas wears a prosthetic leg because he underwent amputation below his right knee. Thomas is a teller at Local Bank. Local Bank requires all Tellers stand during their entire eight hour shift. Thomas's doctor wants him to sit down to minimize pressure on his prosthetic leg and prevent skin breakdown. Thomas requests a stool for use when he is not assisting a customer and requests Local Bank accommodate him by modifying their workplace policy on standing as to him and provide a stool.

◆ *I want to be reassigned to a different position, would that be a reasonable accommodation?*

Yes, if there is no reasonable accommodation which would enable the qualified individual with a disability to remain in their current position or not be an undue hardship on the employer. Reassignment to a vacant

position is considered the last resort. If reassignment is requested, then the individual must be qualified for a vacant position. The individual must have the requisite skills and experience required for a vacant position, and able to perform the job with or without a reasonable

accommodation. Although an employer is not required to provide an individual training to be qualified for a vacant position, the employer is obligated to provide training when it's expected of all similarly situated employees in the same vacant position.

◆ *I have requested to work from home but my employer says my request does not have to be provided, is that true?*

Working from home/telecommuting can be a reasonable accommodation so long as it will be effective. However, this accommodation does not have to be provided if the employer can provide another accommodation that is equally effective. If working from home/telecommuting is approved, then the employer is obligated to provide this reasonable accommodation and modify policies, as to the employee, which prohibit working from home/telecommuting. Whether this type of accommodation will be reasonable will depend on the essential job duties of the qualified individual with a disability. In addition to the essential job duties, an employer can consider the feasibility of supervising the qualified individual and tools or supplies needed to perform those same job duties.

E. QUESTIONS ON REASONABLE ACCOMMODATION REQUESTS DENIED BY THE EMPLOYER

◆ *My employer says I cannot be accommodated because of undue hardship, what does that mean?*

Undue hardship means an employer would encounter significant difficulty or expense in providing a reasonable accommodation after considering such factors like financial resources, the overall structure of the operation of the business, and impact of the accommodation on other employees' ability to perform duties. If the employer finds the reasonable accommodation would be too costly, employers are expected to seek other funding resources like the state rehabilitation agency or a tax break to offset any costs. When an employer determines that significant difficulty

REASONABLE ACCOMMODATIONS IN THE WORKPLACE, THE AMERICANS WITH DISABILITIES ACT,  
AND EMPLOYEE RIGHTS AND RESPONSIBILITIES!

will occur if the initial accommodation requested is provided, the employer should consider availability of an equal yet effective alternate accommodation.

◆ *I was given a reasonable accommodation before and I requested a new one but my employer said they did not have to accommodate me again, was that true?*

If the qualified individual with a disability has a need for a new accommodation, then the employer is obligated to consider the request to determine what workplace barriers would be eliminated or duties can be performed with a second accommodation in place. The employer has an ongoing duty to provide a reasonable accommodation.

Sam was diagnosed with HIV. Sam is a Customer Service Representative at a local call center. Sam has a flexible work schedule to allow time to attend medical appointments. Now, Sam experiences lack of concentration, focus, and memory loss so Sam requests any new call center client guidelines be provided in a written memo. The employer must still consider the effectiveness of Sam's new request even though Sam has the accommodation of flexible hours.

◆ *After I requested a reasonable accommodation, I was advised I will be terminated but I do not agree with the decision, do I have any rights?*

Title V of the ADA prohibits an employer from taking retaliatory action against an individual when the qualified individual enforces their rights under the ADA. However, if an employee violates an employer's rules or policies expected to be adhere to by all employees, then terminating an employee may be viewed as a legitimate business necessity. If the qualified individual disagrees with the decision, they should discuss the personnel action with Personnel or Human Resources staff. If the qualified individual believes the termination was the result of discrimination, then they should address their concern to Personnel or Human Resources but the individual can also contact the Equal Employment Opportunity Commission (EEOC) for assistance.

F. QUESTIONS ON ENFORCING YOUR RIGHTS UNDER THE ADA

REASONABLE ACCOMMODATIONS IN THE WORKPLACE, THE AMERICANS WITH DISABILITIES ACT,  
AND EMPLOYEE RIGHTS AND RESPONSIBILITIES!

◆ *My employer denied my request for an accommodation, what can I do to enforce my rights?*

If an individual disagrees with their employer's denial of their request as undue hardship or they do not agree with the accommodation provided,

then the individual can contact the Equal Employment Opportunity Commission (EEOC). The EEOC has authority to investigate any charge of discrimination on the basis of employment filed with their agency. The charge of discrimination can be filed by mail, telephone, or in person but, it must be done within 180 days or up to 300 days, in some circumstances, of the alleged discriminatory act. The individual should contact EEOC immediately to ensure their rights are protected.

Some employers may have an internal Equal Employment Opportunity (EEO) process to address complaints of employment discrimination. The Personnel Manager, Human Resources Manager, or employee handbook may be great resources for finding out if an EEO process exists for employees.

◆ *I filed a charge of discrimination with the EEOC a while ago, how long does this process take?*

Within 10 days of receiving a charge of discrimination, the EEOC notifies the employer of the charge and commences their investigation. The charge is assigned to an EEOC investigator for further processing. The EEOC investigator has a minimum of 180 days to process the charge. During the charge process, the EEOC investigator will gather information from the charging party and the employer to help them make a final determination. Once the EEOC investigator makes a determination, the charging party and the employer will be notified whether there is reasonable cause to believe the charging party's rights under Title I of the ADA were violated. The final determination should be in writing.

◆ *I received a Right to Sue letter from the EEOC, can I still seek to enforce my rights?*

Yes. The EEOC issues a Right to Sue letter either at the request of the charging party or after the completion of the charge process. This letter permits an individual to file a lawsuit against their employer. The Right to Sue letter notifies the individual of the name of the investigator, the

**REASONABLE ACCOMMODATIONS IN THE WORKPLACE, THE AMERICANS WITH DISABILITIES ACT,  
AND EMPLOYEE RIGHTS AND RESPONSIBILITIES!**

reason for its issuance, and the timeframe for filing a lawsuit. A lawsuit cannot be filed without an individual having a Right to Sue letter.

◆ *If I have any other questions about my rights under the ADA, who can I contact?*

An individual can contact these agencies for more information about reasonable accommodations and the ADA:

**Equal Employment Opportunity Commission (EEOC)**

1-800-669-4000 / 1-800-669-6820 (TTY)

<http://www.eeoc.gov>

**Job Accommodation Network (JAN)**

1-800-ADA-WORK / 1-800-526-7234 / 1-877-781-9403 (TTY)

<http://www.jan.wvu.edu/media/fact.html#emp>

**The U.S. Department of Justice ADA Technical Assistance Program**

1-800-514-0301 (voice) / 1-800-514-0383 (TTY)

<http://www.ada.gov/adahom1.htm>

**The Able Trust**

1-888-838- ABLE (toll-free in Florida) / (850) 224-4493 (voice or TDD)

<http://www.abletrust.org/links/ada.shtml>

**The Florida Alliance for Assistive Services and Technology (FAAST)**

(850) 487-3278 (voice) / (850) 922-5951 (TDD)

<http://www.faast.org/>