

ALASKA STATE COMMISSION FOR HUMAN RIGHTS U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION DISABILITY AND REASONABLE ACCOMMODATION GUIDE

INTRODUCTION

A.S. 18.80.220 and the Americans with Disabilities Act (ADA) require an employer (with 15 or more employees under Federal Law) to provide reasonable accommodation for individuals with disabilities, unless it would cause undue hardship. The law protects applicants and employees with disabilities. This includes people who have disabilities that do not affect them all the time, such as epilepsy, multiple sclerosis, bipolar disorder, schizophrenia or post-traumatic stress disorder (PTSD). People who have disabilities and people who had disabilities in the past may be entitled to reasonable accommodations, if needed. A reasonable accommodation is any change in the work environment or in the way a job is performed that enables a person with a disability to enjoy equal employment opportunities. There are three categories of “reasonable accommodations”:

- ▶ Changes to a job application process
- ▶ Changes to the work environment, or to the way a job is usually done
- ▶ Changes that enable an employee with a disability to enjoy equal benefits and privileges of employment (such as access to training).

Although many individuals with disabilities can apply for and perform jobs without any reasonable accommodations, workplace barriers may keep others from performing jobs which they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or rules (such as rules concerning when work is performed, when breaks are taken, or how job tasks are performed). Reasonable accommodation removes workplace barriers for individuals with disabilities.

This guide answers some of the key questions facing small businesses in connection with reasonable accommodations. It explains the obligations of both employers and individuals with disabilities and reviews the limits on how far employers must go in providing reasonable accommodations.

REQUESTING REASONABLE ACCOMMODATION:

▶ **How must an individual request a reasonable accommodation?**

- The individual must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. An individual may use “plain-language” and need not mention the ADA or use the phrase “reasonable accommodation,” “Americans with Disabilities Act,” or “disability.” Requests for

reasonable accommodation do not need to be in writing, though an employer may choose to write a memorandum or letter confirming the request.

- ▶ **What must an employer do after receiving a request for reasonable accommodation?**
 - Consider the request. Don’t automatically refuse an accommodation request or have an inflexible policy that doesn’t allow for exceptions.
 - Review each request individually. There is no one-size-fits-all accommodation. Accommodations may differ based on the employee’s medical condition, medical treatment and job duties.
 - When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his/her disability and functional limitations.
 - The employer and the individual with a disability should engage in an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.
 - Discuss the request with the applicant or employee, if needed. Ask for additional information if needed to help you determine what type(s) of accommodations might be effective for both the individual and your business. For example, if an employee who is partially blind requests special computer software, you may want to discuss what types of software would meet her needs.
 - Consider additional requests. An employee may need another accommodation or a different accommodation later due to changes in job responsibilities, medical condition or medical treatment.
- ▶ **Must an employer provide the reasonable accommodation that the individual wants?**

- The employer may choose among reasonable accommodations as long as the chosen accommodation is effective (i.e., it removes the workplace barrier at issue). The employer may offer alternative suggestions for reasonable accommodations to remove the workplace barrier in question. If there are two possible reasonable accommodations, and one costs more or is more difficult to provide, the employer may choose the one that is less expensive or easier to provide, as long as it is effective.

- Consider alternative accommodations. If it is not possible to provide the requested accommodation, determine whether other accommodations would be effective for the applicant or employee and for your business.

▶ **How quickly must an employer respond to a request for reasonable accommodation?**

- An employer should respond promptly to a request for reasonable accommodation. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible. Similarly, the employer should act promptly to provide the reasonable accommodation.

TYPES OF REASONABLE ACCOMMODATIONS:

▶ **Is restructuring a job a reasonable accommodation?**

- Yes. This includes: (1) shifting responsibility to other employees for minor job tasks that an employee is unable to perform because of a disability; and (2) altering when and/or how a job task is performed. If an employee is unable to perform a minor job task because of a disability, an employer can require the employee to perform a different minor job function in its place.

▶ **Is providing leave necessitated by an employee's disability a form of reasonable accommodation?**

- Yes, absent undue hardship, providing unpaid leave is a form of reasonable accommodation. However, an employer does not have to provide more paid leave than it provides to other employees.

▶ **May an employer apply a "no-fault" leave policy, under which employees are automatically terminated after they have been on leave for a certain period of time, to an employee with a disability who needs additional leave?**

- If an employee with a disability needs additional unpaid leave as a reasonable accommodation, the employer must provide the employee with the additional leave even if it has a "no-fault" policy. An employer, however, does not need to provide leave if: (1) it can provide an effective accommodation that allows the person to keep working, or (2) it can show that granting additional leave would cause an undue hardship.

▶ **When an employee requests leave as a reasonable accommodation, may an employer provide an accommodation that requires him/her to remain on the job instead?**

- Yes, if the employer's proposed reasonable accommodation would be effective and eliminate the need for leave. Accordingly, an employer may reallocate minor job tasks or provide a temporary transfer instead of leave, so long as the employee can still address his/her medical needs.

▶ **Is a modified or part-time schedule a reasonable accommodation?**

- Yes, absent undue hardship. A modified schedule may involve adjusting arrival or departure times, providing periodic breaks, altering when certain job tasks are performed, allowing an employee to use accrued paid leave, or providing additional unpaid leave.

▶ **Is it a reasonable accommodation to modify a workplace policy because of an employee's disability?**

- Yes. For example, granting an employee time off from work or an adjusted work schedule as a reasonable accommodation may involve modifying leave or attendance procedures or policies. However, reasonable accommodation only requires that the employer modify the policy for an employee with a disability. The employer may continue to apply the policy to all other employees.

▶ **Does an employer have to reassign to a vacant position an employee who can no longer perform his/her job because of a disability?**

- Yes, unless the employer can show that it would be an undue hardship. The following criteria apply to reassignment:
 - An employee must be "qualified" for the new position. This means that s/he: (1) satisfies the skill, experience, education, and other job-related requirements of the position, and (2) can perform the primary job tasks of the new position, with or without reasonable accommodation. The employer does not have to assist the employee to become qualified.
 - An employer does not have to bump other employees or create a position. Nor does an employer have to promote the employee.
 - Reassignment should be to a position that is equal in pay and status to the position that the employee held, or to one that is as close as possible in terms of pay and status if an equivalent position is not vacant.

▶ **Does a reasonable accommodation include changing a person's supervisor?**

- No. The ADA may, however, require that supervisory methods, such as the method of communicating assignments, be altered as a form of reasonable accommodation.

▶ **Are there certain things that are not considered reasonable accommodations and are therefore not required?**

- An employer does not have to eliminate a primary job responsibility.
- An employer is not required to lower production standards that are applied to all employees, though it may have to provide reasonable accommodation to enable an employee with a disability to meet them.
- An employer does not have to provide personal use items, such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices.

- An employer never has to excuse a violation of a uniformly applied conduct rule that is job-related and consistent with business necessity. This means, for example, that an employer never has to tolerate or excuse violence, threats of violence, stealing, or destruction of property. An employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on an employee without a disability.

▶ **May an employer tell other employees that someone is receiving a reasonable accommodation?**

- No, because this usually amounts to a disclosure that the individual has a disability. The ADA specifically prohibits the disclosure of medical information except in certain limited situations, which do not include disclosure to coworkers.
- An employer may certainly respond to a question from an employee about why a coworker is receiving what is perceived as “different” or “special” treatment by emphasizing its policy of assisting any employee who encounters difficulties in the workplace. The employer also may find it helpful to point out that many of the workplace issues encountered by employees are personal, and that, in these circumstances, it is the employer’s policy to respect employee privacy. An employer may be able to make this point effectively by reassuring the employee asking the question that his/her privacy would similarly be respected if s/he found it necessary to ask the employer for some kind of workplace change for personal reasons. Employers might also find it helpful to provide all employees with information about various laws that require employers to meet certain employee needs (e.g., A.S. 18.80. 220, the ADA and the Family and Medical Leave Act), while also requiring them to protect the privacy of employees.

▶ **May an employer ask whether a reasonable accommodation is needed when an employee with a disability has not asked for one?**

- If an employer knows that an employee has a disability, it may ask whether s/he needs a reasonable accommodation when it reasonably believes that the employee may need an accommodation. An employer also may ask an employee with a disability who is having performance or conduct problems if s/he needs reasonable accommodation.

UNDUE HARDSHIP: LIMITS ON PROVIDING REASONABLE ACCOMMODATIONS

An employer never has to provide any reasonable accommodation that causes undue hardship, significant difficulty or expense. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive or disruptive, or those that would fundamentally alter the nature or operation of the business.

Every request for reasonable accommodation should be evaluated separately to determine if it would impose an undue hardship, taking into account:

- ▶ The nature and cost of the accommodation needed;
- ▶ The overall financial resources of the business; the number of persons employed by the business; and the effect on expenses and resources of the business;
- ▶ The impact of the accommodation on the business.

Don’t automatically assume that you can’t afford to provide an accommodation. Many accommodations are not expensive, and some are free. Also, you may be eligible for tax credits, such as the Small Business Tax Credit, or other funding, such as vocational rehabilitation funding.

Ask for help, if needed. If you and the applicant or employee are having difficulty finding the right accommodation, the U.S. Department of Labor’s Job Accommodation Network(JAN) may be able to help. JAN provides free, confidential accommodation assistance.

An employer cannot claim undue hardship based on employees’ (or customers’) fears or prejudices, or because providing a reasonable accommodation might have a negative impact on employee morale. Employers, however, may claim undue hardship where a reasonable accommodation would be unduly disruptive to other employees’ ability to work.

▶ **Must an employer modify the work hours of an employee with a disability if doing so would prevent other employees from performing their jobs?**

- No. If modifying one employee’s work hours (or granting leave) would prevent other employees from doing their jobs, then the significant disruption to the operations of the employer constitutes an undue hardship.

▶ **Can an employer deny a request for leave when an employee cannot provide a fixed date of return?**

- In some situations, an employee may be able to provide only an approximate date of return because treatment and recuperation do not always permit exact timetables. If an employer is able to show that the lack of a fixed return date imposes an undue hardship, then it can deny the leave. Undue hardship could result if the employer can neither plan for the employee’s return nor permanently fill the position. In other situations, an employer may be able to be flexible.



Were you the victim of discrimination? Need to file a complaint? Looking for guidance on a discrimination issue? Contact the Alaska State Commission for Human Rights: (907) 274-4692, or (800) 478-4692, or hrc@alaska.gov, or humanrights.alaska.gov; or the U.S. Equal Employment Opportunity Commission at (800) 669-4000 or www.eeoc.gov.