



# Mastering the Fundamentals: The ADA and the Interactive Process

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## Today's Presenters



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# ADA: The Big Picture



## Legal Framework

- ADA and state disability laws
- Purpose: Allow **applicants and employees with disabilities** to work and enjoy the same “benefits and privileges” of employment
- Employers must **reasonably accommodate** qualified applicants and employees with a disability
- Unless there is **undue hardship**

## What Is a Disability?

1. A physical or mental impairment that **substantially limits** one or more of the **major life activities** of such individual (the “actual disability” prong); or
2. A **record** of such an impairment; or
3. Being **regarded** as having such an impairment as described in paragraph 1 of this section. This means that the individual has been subjected to an action prohibited by the ADA as amended because of an actual or perceived impairment that is not both “transitory and minor.”

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## Who Gets a Reasonable Accommodation?

- An applicant or employee with a disability that impacts their ability to perform their job duties or enjoy the benefits and privileges of employment
- Includes applicants for employment
- Short-term, long-term, part-time, full-time, and probationary employees may be entitled to a reasonable accommodation

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## Triggering the ADA

- No magic words
- Sufficient information to indicate to employer that employee has a disability that may be impacting ability to do job
- When are you on notice?
  - Water cooler talk
  - Observations from others
  - Employee files
  - Performance and behavioral issues
  - Leave requests

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## How to Respond?

- How can we help?
- Document the conversation
- If easy – accommodate the request
- Engage in the interactive process

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## Request for Accommodation?

Lucy's spouse phones Lucy's supervisor on Monday morning to inform her that Lucy had a medical emergency due to diabetes, needed to be hospitalized, and thus requires time off.

**POLL:** Is this a request for reasonable accommodation on behalf of Lucy?

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## Request for Accommodation?

Debbie, a new employee who uses a wheelchair, informs her employer that her wheelchair cannot fit under the desk in her office and asks to change her workstation.

**POLL:** Is Debbie's request for a different workstation a request for a reasonable accommodation?

Jamal's supervisor disciplines him for being tardy. In response, Jamal tells his supervisor, "I'm having trouble getting to work at my scheduled start time because of side effects from one of my medications."

**POLL:** Is Jamal making a request for a reasonable accommodation?

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## Request for Reasonable Accommodation?

Kevin tells his supervisor that he would like a new chair because his present one is uncomfortable.

**POLL:** Is Kevin's request for a new chair a request for a reasonable accommodation?

Krystal mentions one day during water cooler chitchat that she is so depressed she has trouble focusing during meetings and remembering her assigned tasks.

**POLL:** Are Krystal's comments a request for a reasonable accommodation?

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## What Is a Reasonable Accommodation?

- A reasonable accommodation is something that ***enables an individual to perform the essential functions of their job***
- Don't need to excuse an individual from their essential functions
- What is an essential function?
  - Job descriptions are relevant but not determinative
  - Include "soft skills" in the job description

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## Employer's Role

Engage in the interactive process to determine:

- (1) whether the requested accommodation is needed;
- (2) if needed, whether the requested accommodation will be reasonable and effective; and
- (3) if reasonable and effective, whether providing the reasonable accommodation will impose an undue hardship.

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## Interactive Process

- Goal: Identify an accommodation that will be effective and reasonable
- Communicate
  - Ask employee what they need
  - Request medical documentation
- Document
- Implement the accommodation
- Follow up with the employee

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## Requesting Medical Documentation

- Documentation should:
  - Describe nature, severity, and duration of condition
  - Identify activity limited by the disability
  - Substantiate need for requested accommodation
- Okay to request clarification
- Provider should have appropriate expertise
- When to send to your choice of provider?

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## Possible Accommodations

- Making existing facilities accessible
- Acquiring or modifying equipment
- Providing qualified readers or interpreters
- Modifying workplace policies
- Job restructuring
- Modified work schedules or locations
- Leave of absence
- Reassignment
- Anything else employee and employer determine may be reasonable and effective

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- Employee and health care provider
- Job Accommodation Network
  - [www.askjan.org](http://www.askjan.org)
- Other HR professionals or attorneys
- Internet search
- Past practices

- Leave can be a reasonable accommodation if it will enable the employee to return to their essential functions
- Can exceed FMLA/state leave entitlement
- Little guidance on duration of leave that is considered reasonable
- Indefinite leave is not reasonable

## Reassignment

- Appropriate when there is no reasonable accommodation in current job and leave doesn't work
- Before termination, look to reassign to open, available position
  - Do not have to create a position
  - Do not have to promote employee
  - Employee must meet minimum qualifications, but if they do, should not have to compete

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## Direct Threat

- Employee who is a "direct threat" to self or others is not a "qualified" individual under the ADA
  - "Direct threat" = a significant risk of substantial harm that cannot be eliminated or reduced by reasonable accommodation
- Employer is not obligated to tolerate violence in the workplace, even if the misconduct is arguably the result of a disability
- High threshold, but weigh risk of litigation vs. serious safety concern
- Consider if there are reasonable accommodations that would reduce or eliminate the threat
- Can ask employee's HCP to confirm they are not a direct threat/ whether an accommodation is needed to eliminate the threat

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# Real-Life Scenarios



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## Amber is Always on Leave

Amber, a longtime cashier, went out on medical leave 14 weeks ago for surgery. You gave her 12 weeks off for FMLA and thought she would be back to work by now. She hasn't returned after 12 weeks.

**POLL:** If Amber provides a note that says she is still recovering from her back surgery and needs just 4 more weeks off, do you have to provide it?

What if after 16 weeks, Amber submits another note requesting another 4 weeks?

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## COVID-Concerned Carla

Since the pandemic started, Carla has worked from home. Now everyone else is returning to the office, but Carla is very anxious and doesn't feel safe coming back. She asks if she can continue to work from home.

**POLL:** Do you have to let Carla work from home?

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## Outburst Ollie

Ollie informs you that he has PTSD that prevents him from controlling his behavior when under stress and that receiving negative, in-person feedback triggers that stress reaction. On occasion, he has yelled at this supervisor when receiving his performance review and the supervisor has reminded him that is inappropriate.

Yesterday, he yelled at his supervisor again. Ollie says the outburst was related to his medical condition.

**POLL:** Can you fire Ollie?

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## Questions



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