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SMALL EMPLOYERS AND REASONABLE ACCOMMODATION

INTRODUCTION

The Americans with Disabilities Act (ADA) requires an employer with 15 or more employees to provide reasonable accommodation for individuals with disabilities, unless it would cause undue hardship. 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":

- (i) changes to a *job application process*
- (ii) changes to the *work environment*, or to the *way a job is usually done*
- (iii) 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.

This guide is adapted from the Equal Employment Opportunity Commission's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA. Small employers wishing to learn more about reasonable accommodation and undue hardship should call **1-800-669-3362** to request a free copy of the Enforcement Guidance, or review it at EEOC's website, **www.eeoc.gov**.

REQUESTING REASONABLE ACCOMMODATION

1. ***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 English" and need not mention the ADA or use the phrase "reasonable accommodation." 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.

2. ***What must an employer do after receiving a request for reasonable accommodation?***

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.

There are extensive public and private resources to help employers and individuals with disabilities who are not familiar with possible accommodations. (See the Appendix to this guide for a resource directory to help identify reasonable accommodations.)

3. ***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.

4. ***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

There are many different kinds of reasonable accommodations. Below is information on some of them.

5. 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.

6. Is providing *leave* necessitated by an employee's disability a form of reasonable accommodation?¹

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.

7. 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.

8. 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

¹ Employers who are covered by the Family and Medical Leave Act (FMLA) may have obligations under that law, as well as the ADA. For more information on how these two laws apply to leave and modified schedules, employers may consult the EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA and the EEOC's Fact Sheet on the FMLA and the ADA.

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.

9. 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.

10. 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.

11. 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.

12. 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.

OTHER REASONABLE ACCOMMODATION ISSUES

13. 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.

14. 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., the ADA and the Family and Medical Leave Act), while also requiring them to protect the privacy of employees.

15. *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***, meaning 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.

If cost is an issue, an employer should determine whether funding is available from an outside source, such as a state rehabilitation agency, to pay for all or part of the accommodation. In addition, the employer should determine whether it is eligible for certain tax credits or deductions to offset the cost of the accommodation. Also, to the extent that a portion of the cost of an accommodation causes undue hardship, the employer should ask the individual with a disability if s/he will pay the difference.

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***.

16. *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.

17. 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.

APPENDIX

RESOURCES FOR LOCATING REASONABLE ACCOMMODATIONS

U.S. Equal Employment Opportunity Commission

1-800-669-3362 (Voice)

1-800-800-3302 (TT)

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. § 12101 et seq. (1994), and the regulations, 29 C.F.R. § 1630 (1997). In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The two main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. §§ 1630.2(o), (p), 1630.9 (1997), and (2) *A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act* III, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992). The Manual includes a 200-page Resource Directory, including federal and state agencies, rehabilitation agencies (that may be able to pay some/all of the costs for certain reasonable accommodations), and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidances and documents: (1) Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995); (2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997); and (4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996).

Finally, the EEOC has a poster that employers and labor unions may use to fulfill the ADA's posting requirement.

All of the above-listed documents, with the exception of the *ADA Technical Assistance Manual and Resource Directory* and the poster, are also available through the Internet at <http://www.eeoc.gov>.

U.S. Department of Labor

(To obtain information on the Family and Medical Leave Act)

To request written materials: 1-800-959-3652 (Voice) 1-800-326-2577 (TT)

To ask questions: (202) 219-8412 (Voice)

Internal Revenue Service

(For information on tax credits and deductions for providing certain reasonable accommodations)

(202) 622-6060 (Voice)

Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TT)

<http://janweb.icdi.wvu.edu/>.

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

ADA Disability and Business Technical Assistance Centers (DBTACs)

1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf

(301) 608-0050 (Voice/TT)

The Registry offers information on locating and using interpreters and transliteration services.

RESNA Technical Assistance Project

(703) 524-6686 (Voice)

(703) 524-6639 (TT)

<http://www.resna.org/hometa1.htm>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

* information and referral centers to help determine what devices may assist a

person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products),

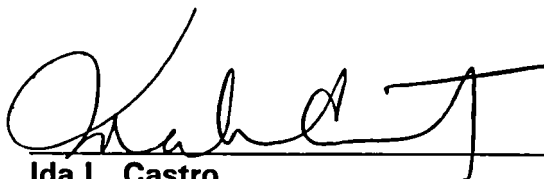
- * centers where individuals can try out devices and equipment,
- * assistance in obtaining funding for and repairing devices, and
- * equipment exchange and recycling programs.

EEOC	NOTICE	Number
		915.002
		Date
		03/01/99

1. **SUBJECT:** EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act
2. **PURPOSE:** This enforcement guidance sets forth the Commission's position under Title I of the Americans with Disabilities Act of 1990, on reasonable accommodation and undue hardship.
3. **EFFECTIVE DATE:** Upon receipt.
4. **EXPIRATION DATE:** As an exception to EEOC Order 205.001, Appendix B, Attachment 4, § a(5), this Notice will remain in effect until rescinded or superseded.
5. **ORIGINATOR:** ADA Division, Office of Legal Counsel.
6. **INSTRUCTIONS:** File after Section 902 of Volume II of the Compliance Manual.

3/1/99

Date



Ida L. Castro
Chairwoman

**Enforcement Guidance: Reasonable Accommodation and Undue Hardship
Under the Americans with Disabilities Act**

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GENERAL PRINCIPLES

Reasonable Accommodation

Title I of the Americans with Disabilities Act of 1990 (the "ADA")¹ requires an employer² to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship. "In general, an accommodation is 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."³ There are three categories of "reasonable accommodations":

"(i) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

(ii) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(iii) modifications or adjustments that enable a covered entity's employee with

¹ 42 U.S.C. §§ 12101-12117, 12201-12213 (1994) (codified as amended).

The analysis in this guidance applies to federal sector complaints of non-affirmative action employment discrimination arising under section 501 of the Rehabilitation Act of 1973. 29 U.S.C. § 791(g) (1994). It also applies to complaints of non-affirmative action employment discrimination arising under section 503 and employment discrimination under section 504 of the Rehabilitation Act. 29 U.S.C. §§ 793(d), 794(d) (1994).

The ADA's requirements regarding reasonable accommodation and undue hardship supercede any state or local disability antidiscrimination laws to the extent that they offer less protection than the ADA. See 29 C.F.R. § 1630.1(c)(2) (1997).

² In addition to employers, the ADA requires employment agencies, labor organizations, and joint labor-management committees to provide reasonable accommodations. See 42 U.S.C. § 12112(a), (b)(5)(A) (1994).

³ 29 C.F.R. pt. 1630 app. § 1630.2(o) (1997).

There are a number of possible reasonable accommodations that an employer may have to provide in connection with modifications to the work environment or adjustments in how and when a job is performed. These include:

- making existing facilities accessible;
- job restructuring;
- part-time or modified work schedules;
- acquiring or modifying equipment;
- changing tests, training materials, or policies;
- providing qualified readers or interpreters; and
- reassignment to a vacant position.⁷

There are several modifications or adjustments that are not considered forms of reasonable accommodation. An employer does not have to eliminate an essential function, *i.e.*, a fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or without reasonable accommodation,⁸ is not a "qualified" individual with a disability within the meaning of the ADA. Nor is an employer required to lower production standards -- whether qualitative or quantitative⁹ -- that are applied uniformly to employees with and without disabilities. However, an employer may have to provide reasonable accommodation to enable an employee with a disability to meet the production standard. While an employer is not required to eliminate an essential function or lower a production standard, it may do so if it wishes.

An employer does not have to provide as reasonable accommodations personal use items needed in accomplishing daily activities both on and off the job. Thus, an

⁷ 42 U.S.C. § 12111(9) (1994); 29 C.F.R. § 1630.2(o)(2)(i-ii) (1997).

⁸ "[W]ith or without reasonable accommodation" includes, if necessary, reassignment to a vacant position. Thus, if an employee is no longer qualified because of a disability to continue in his/her present position, an employer must reassign him/her as a reasonable accommodation. See the section on "Reassignment," *infra* pp. 37-38 and n.73.

⁹ 29 C.F.R. pt. 1630 app. § 1630.2(n) (1997).

Example A: An employee with a hearing disability must be able to contact the public by telephone. The employee proposes that he use a TTY¹² to call a relay service operator who can then place the telephone call and relay the conversation between the parties. This is a reasonable accommodation because it is effective. It enables the employee to communicate with the public.

Example B: A cashier easily becomes fatigued because of lupus and, as a result, has difficulty making it through her shift. The employee requests a stool because sitting greatly reduces the fatigue. This reasonable accommodation is effective because it removes a workplace barrier -- being required to stand -- and thus gives the employee the opportunity to perform as well as any other cashier.

The term "reasonable accommodation" is a term of art that Congress defined only through examples of changes or modifications to be made, or items to be provided, to a qualified individual with a disability. The statutory definition of "reasonable accommodation" does not include any quantitative, financial, or other limitations regarding the extent of the obligation to make changes to a job or work environment.¹³ **The only statutory limitation on an employer's obligation to provide "reasonable accommodation" is that no such change or modification is required if it would cause "undue hardship" on the employer.**¹⁴ Undue hardship addresses quantitative, financial, or other limitations on an employer's ability to provide reasonable accommodation.

¹² A TTY is a device that permits individuals with hearing and speech impairments to communicate by telephone.

¹³ 42 U.S.C. § 12111(9) (1994) ("The term 'reasonable accommodation' may include -- (A) making existing facilities . . . readily accessible . . .; and (B) job restructuring; part-time or modified work schedules, reassignment to a vacant position; acquisition or modification of equipment or devices, . . .").

¹⁴ See 42 U.S.C. § 12112 (b)(5)(A) (1994) (it is a form of discrimination to fail to provide a reasonable accommodation "unless such covered entity can demonstrate that the accommodation would impose an undue hardship . . ."); see also 42 U.S.C. § 12111(10) (1994) (defining "undue hardship" based on factors assessing cost and difficulty).

The legislative history discusses financial, administrative, and operational limitations on providing reasonable accommodations only in the context of defining "undue hardship." Compare Senate Report, supra note 6, at 31-34 with 35-36; House Education and Labor Report, supra note 6, at 57-58 with 67-70.

REQUESTING REASONABLE ACCOMMODATION

1. How must an individual request a reasonable accommodation?

When an individual decides to request accommodation, the individual or his/her representative must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. To request accommodation, an individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation."¹⁷

Example A: An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation.

¹⁷ See, e.g., Schmidt v. Safeway Inc., 864 F. Supp. 991, 997, 3 AD Cas. (BNA) 1141, 1146-47 (D. Or. 1994) ("statute does not require the plaintiff to speak any magic words. . . . The employee need not mention the ADA or even the term 'accommodation.'"). See also Hendricks-Robinson v. Excel Corp., 154 F.3d 685, 694, 8 AD Cas. (BNA) 875, 882 (7th Cir. 1998) ("[a] request as straightforward as asking for continued employment is a sufficient request for accommodation"); Bultemeyer v. Ft. Wayne Community Schs., 100 F.3d 1281, 1285, 6 AD Cas. (BNA) 67, 71 (7th Cir. 1996) (an employee with a known psychiatric disability requested reasonable accommodation by stating that he could not do a particular job and by submitting a note from his psychiatrist); McGinnis v. Wonder Chemical Co., 5 AD Cas. (BNA) 219 (E.D. Pa. 1995) (employer on notice that accommodation had been requested because: (1) employee told supervisor that his pain prevented him from working and (2) employee had requested leave under the Family and Medical Leave Act).

Nothing in the ADA requires an individual to use legal terms or to anticipate all of the possible information an employer may need in order to provide a reasonable accommodation. The ADA avoids a formulistic approach in favor of an interactive discussion between the employer and the individual with a disability, after the individual has requested a change due to a medical condition. Nevertheless, some courts have required that individuals initially provide detailed information in order to trigger the employer's duty to investigate whether reasonable accommodation is required. See, e.g., Taylor v. Principal Fin. Group, Inc., 93 F.3d 155, 165, 5 AD Cas. (BNA) 1653, 1660 (5th Cir. 1996); Miller v. Nat'l Cas. Co., 61 F.3d 627, 629-30, 4 AD Cas. (BNA) 1089, 1090-91 (8th Cir. 1995).

disability.¹⁹ Of course, the individual with a disability may refuse to accept an accommodation that is not needed.

Example A: An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. This discussion constitutes a request for reasonable accommodation.

Example B: An employee has been out of work for six months with a workers' compensation injury. The employee's doctor sends the employer a letter, stating that the employee is released to return to work, but with certain work restrictions. (Alternatively, the letter may state that the employee is released to return to a light duty position.) The letter constitutes a request for reasonable accommodation.

3. Do requests for reasonable accommodation need to be in writing?

No. Requests for reasonable accommodation do not need to be in writing. Individuals may request accommodations in conversation or may use any other mode of communication.²⁰ An employer may choose to write a memorandum

¹⁹ Cf. Beck v. Univ. of Wis. Bd. of Regents, 75 F.3d 1130, 5 AD Cas. (BNA) 304 (7th Cir. 1996); Schmidt v. Safeway Inc., 864 F. Supp. 991, 997, 3 AD Cas. (BNA) 1141, 1146 (D. Or. 1994). But see Miller v. Nat'l Casualty Co., 61 F.3d 627, 630, 4 AD Cas. (BNA) 1089, 1091 (8th Cir. 1995) (employer had no duty to investigate reasonable accommodation despite the fact that the employee's sister notified the employer that the employee "was mentally falling apart and the family was trying to get her into the hospital").

The employer should be receptive to any relevant information or requests it receives from a third party acting on the individual's behalf because the reasonable accommodation process presumes open communication in order to help the employer make an informed decision. See 29 C.F.R. §§ 1630.2(o), 1630.9 (1997); 29 C.F.R. pt. 1630 app. §§ 1630.2(o), 1630.9 (1997).

²⁰ Although individuals with disabilities are not required to keep records, they may find it useful to document requests for reasonable accommodation in the event there is a dispute about whether or when they requested accommodation. Employers, however, must keep all employment records, including records of requests for reasonable accommodation, for one year from the making of the record or the

questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.

The exact nature of the dialogue will vary. In many instances, both the disability and the type of accommodation required will be obvious, and thus there may be little or no need to engage in any discussion. In other situations, the employer may need to ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation. While the individual with a disability does not have to be able to specify the precise accommodation, s/he does need to describe the problems posed by the workplace barrier. Additionally, suggestions from the individual with a disability may assist the employer in determining the type of reasonable accommodation to provide. Where the individual or the employer are not familiar with possible accommodations, there are extensive public and private resources to help the employer identify reasonable accommodations once the specific limitations and workplace barriers have been ascertained.²³

6. May an employer ask an individual for **documentation** when the individual requests reasonable accommodation?

Yes. 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.²⁴ The employer is entitled to know that the

the regulations at § 1630.9 provides a detailed discussion of the reasonable accommodation process.

Engaging in an interactive process helps employers to discover and provide reasonable accommodation. Moreover, in situations where an employer fails to provide a reasonable accommodation (and undue hardship would not be a valid defense), evidence that the employer engaged in an interactive process can demonstrate a "good faith" effort which can protect an employer from having to pay punitive and certain compensatory damages. See 42 U.S.C. § 1981a(a)(3) (1994).

²³ See 29 C.F.R. pt. 1630 app. § 1630.9 (1997). The Appendix to this Guidance provides a list of resources to identify possible accommodations.

²⁴ 29 C.F.R. pt. 1630 app. § 1630.9 (1997); see also EEOC Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations at 6, 8 FEP Manual (BNA) 405:7191, 7193 (1995) [hereinafter Preemployment Questions and Medical Examinations]; EEOC Enforcement Guidance: The Americans with

As an alternative to requesting documentation, an employer may simply discuss with the person the nature of his/her disability and functional limitations. It would be useful for the employer to make clear to the individual why it is requesting information, i.e., to verify the existence of an ADA disability and the need for a reasonable accommodation.

Example A: An employee says to an employer, "I'm having trouble reaching tools because of my shoulder injury." The employer may ask the employee for documentation describing the impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities (i.e., the employer is seeking information as to whether the employee has an ADA disability).

Example B: A marketing employee has a severe learning disability. He attends numerous meetings to plan marketing strategies. In order to remember what is discussed at these meetings he must take detailed notes but, due to his disability, he has great difficulty writing. The employee tells his supervisor about his disability and requests a laptop computer to use in the meetings. Since neither the disability nor the need for accommodation are obvious, the supervisor may ask the employee for reasonable documentation about his impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities. The employer also may ask why the disability necessitates use of a laptop computer (or any other type of reasonable accommodation, such as a tape recorder) to help the employee retain the information from the meetings.²⁶

Example C: An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. The supervisor can ask the spouse to send in

his/her doctor to answer questions. The release should be clear as to what information will be requested. Employers must maintain the confidentiality of all medical information collected during this process, regardless of where the information comes from. See Question 41 and note 103, infra.

²⁶ See Question 9, infra, for information on choosing between two or more effective accommodations.

Any medical examination conducted by the employer's health professional must be job-related and consistent with business necessity. This means that the examination must be limited to determining the existence of an ADA disability and the functional limitations that require reasonable accommodation.³¹ If an employer requires an employee to go to a health professional of the employer's choice, the employer must pay all costs associated with the visit(s).

8. Are there situations in which an employer cannot ask for documentation in response to a request for reasonable accommodation?

Yes. An employer cannot ask for documentation when: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the individual has already provided the employer with sufficient information to substantiate that s/he has an ADA disability and needs the reasonable accommodation requested.

Example A: An employee brings a note from her treating physician explaining that she has diabetes and that, as a result, she must test her blood sugar several times a day to ensure that her insulin level is safe in order to avoid a hyperglycemic reaction. The note explains that a hyperglycemic reaction can include extreme thirst, heavy breathing, drowsiness, and flushed skin, and eventually would result in unconsciousness. Depending on the results of the blood test, the employee might have to take insulin. The note requests that the employee be allowed three or four 10-minute breaks each day to test her blood, and if necessary, to take insulin. The doctor's note constitutes sufficient documentation that the person has an ADA disability because it describes a substantially limiting impairment and the reasonable accommodation needed as a result. The employer cannot ask for additional documentation.

Example B: One year ago, an employer learned that an employee had bipolar disorder after he requested a reasonable accommodation. The documentation provided at that time from the employee's psychiatrist indicated that this was a permanent condition which would always involve periods in which the disability would remit and then intensify. The psychiatrist's letter explained that during periods when the condition flared up, the person's manic moods or depressive episodes could be

³¹ Employers also may consider alternatives like having their health professional consult with the individual's health professional, with the employee's consent.

opportunity to apply for a position, to perform the essential functions of a position, or to gain equal access to a benefit or privilege of employment). Similarly, when there are two or more effective accommodations, the employer may choose the one that is easier to provide. In either situation, the employer does not have to show that it is an undue hardship to provide the more expensive or more difficult accommodation. If more than one accommodation is effective, "the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations."³³

Example A: An employee with a severe learning disability has great difficulty reading. His supervisor sends him many detailed memoranda which he often has trouble understanding. However, he has no difficulty understanding oral communication. The employee requests that the employer install a computer with speech output and that his supervisor send all memoranda through electronic mail which the computer can then read to him. The supervisor asks whether a tape recorded message would accomplish the same objective and the employee agrees that it would. Since both accommodations are effective, the employer may choose to provide the supervisor and employee with a tape recorder so that the supervisor can record her memoranda and the employee can listen to them.

Example B: An attorney with a severe vision disability requests that her employer provide someone to read printed materials that she needs to review daily. The attorney explains that a reader enables her to review substantial amounts of written materials in an efficient manner. Believing that this reasonable accommodation would be too costly, the employer instead provides the attorney with a device that allows her to magnify print so that she can read it herself. The attorney can read print using this device, but with such great difficulty it significantly slows down her ability to review written materials. The magnifying device is ineffective as a reasonable accommodation because it does not provide the attorney with an equal opportunity to attain the same level of performance as her colleagues. Without an equal opportunity to attain the same level of performance, this attorney is denied an equal opportunity to compete for promotions. In this instance, failure to provide the reader, absent undue hardship, would violate the ADA.

³³ 29 C.F.R. pt. 1630 app. §1630.9 (1997).

11. May an employer require an individual with a disability to accept a reasonable accommodation that s/he does not want?

No. An employer may not require a qualified individual with a disability to accept an accommodation. If, however, an employee needs a reasonable accommodation to perform an essential function or to eliminate a direct threat, and refuses to accept an effective accommodation, s/he may not be qualified to remain in the job.³⁶

REASONABLE ACCOMMODATION AND JOB APPLICANTS

12. May an employer ask whether a reasonable accommodation is needed when an applicant has not asked for one?

An employer may tell applicants what the hiring process involves (e.g., an interview, timed written test, or job demonstration), and may ask applicants whether they will need a reasonable accommodation for this process.

During the hiring process and before a conditional offer is made, an employer generally may not ask an applicant whether s/he needs a reasonable accommodation for the job, except when the employer knows that an applicant has a disability -- either because it is obvious or the applicant has voluntarily disclosed the information -- and could reasonably believe that the applicant will need a reasonable accommodation to perform specific job functions. If the applicant replies that s/he needs a reasonable accommodation, the employer may inquire as to what type.³⁷

After a conditional offer of employment is extended, an employer may inquire whether applicants will need reasonable accommodations related to anything connected with the job (i.e., job performance or access to benefits/privileges of the job) as long as all entering employees in the same job category are asked this question. Alternatively, an employer may ask a specific applicant if s/he needs a reasonable accommodation if the employer knows that this applicant

³⁶ See 29 C.F.R. pt. 1630 app. § 1630.9 (1997); see also Hankins v. The Gap, Inc., 84 F.3d 797, 801, 5 AD Cas. (BNA) 924, 927 (6th Cir. 1996).

³⁷ 42 U.S.C. § 12112(d)(2)(A) (1994); 29 C.F.R. § 1630.13(a) (1997). For a thorough discussion of these requirements, see Preemployment Questions and Medical Examinations, supra note 24, at 6-8, 8 FEP Manual (BNA) 405:7193-94.

undue hardship), and at the interview inquired to what extent the individual would need a sign language interpreter to perform any essential functions requiring communication with other people.

Example B: An individual who has paraplegia applies for a secretarial position. Because the office has two steps at the entrance, the employer arranges for the applicant to take a typing test, a requirement of the application process, at a different location. The applicant fails the test. The employer does not have to provide any further reasonable accommodations for this individual because she is no longer qualified to continue with the application process.

REASONABLE ACCOMMODATION RELATED TO THE BENEFITS AND PRIVILEGES OF EMPLOYMENT⁴⁰

The ADA requires employers to provide reasonable accommodations so that employees with disabilities can enjoy the "benefits and privileges of employment" equal to those enjoyed by similarly-situated employees without disabilities. Benefits and privileges of employment include, but are not limited to, employer-sponsored: (1) training, (2) services (e.g., employee assistance programs (EAP's), credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation), and (3) parties or other social functions (e.g., parties to celebrate retirements and birthdays, and company outings).⁴¹ If an employee with a disability needs a reasonable accommodation in order to gain access to, and have an equal opportunity to participate in, these benefits and privileges, then the employer must provide the accommodation unless it can show undue hardship.

14. Does an employer have to provide reasonable accommodation to enable an employee with a disability to have equal access to information communicated in the workplace to non-disabled employees?

Yes. Employers provide information to employees through different means, including computers, bulletin boards, mailboxes, posters, and public address

⁴⁰ The discussions and examples in this section assume that there is only one effective accommodation and that the reasonable accommodation will not cause undue hardship.

⁴¹ See 29 C.F.R. pt. 1630 app. § 1630.9 (1997).

Resources staff. One staff member is blind and requests that materials be provided in braille. Super Trainers refuses to provide the materials in braille. XYZ maintains that it is the responsibility of Super Trainers and sees no reason why it should have to arrange and pay for the braille copy.

Both XYZ (as an employer covered under Title I of the ADA) and Super Trainers (as a public accommodation covered under Title III of the ADA⁴²) have obligations to provide materials in alternative formats. This fact, however, does not excuse either one from their respective obligations. If Super Trainers refuses to provide the braille version, despite its Title III obligations, XYZ still retains its obligation to provide it as a reasonable accommodation, absent undue hardship.

Employers arranging with an outside entity to provide training may wish to avoid such problems by specifying in the contract who has the responsibility to provide appropriate reasonable accommodations. Similarly, employers should ensure that any offsite training will be held in an accessible facility if they have an employee who, because of a disability, requires such an accommodation.

Example B: XYZ Corp. arranges for one of its employees to provide CPR training. This three-hour program is optional. A deaf employee wishes to take the training and requests a sign language interpreter. XYZ must provide the interpreter because the CPR training is a benefit that XYZ offers all employees, even though it is optional.

⁴² 42 U.S.C. §§ 12181(7), 12182(1)(A), (2)(A)(iii) (1994).

Example: A cleaning crew works in an office building. One member of the crew wears a prosthetic leg which enables him to walk very well, but climbing steps is painful and difficult. Although he can perform his essential functions without problems, he cannot perform the marginal function of sweeping the steps located throughout the building. The marginal functions of a second crew member include cleaning the small kitchen in the employee's lounge, which is something the first crew member can perform. The employer can switch the marginal functions performed by these two employees.

Leave

Permitting the use of accrued paid leave, or unpaid leave, is a form of reasonable accommodation when necessitated by an employee's disability.⁴⁵ **An employer does not have to provide paid leave beyond that which is provided to similarly-situated employees.** Employers should allow an employee with a disability to exhaust accrued paid leave first and then provide unpaid leave.⁴⁶ For example, if employees get 10 days of paid leave, and an employee with a disability needs 15 days of leave, the employer should allow the individual to use 10 days of paid leave and 5 days of unpaid leave.

An employee with a disability may need leave for a number of reasons related to the disability, including, but not limited to:

- obtaining medical treatment (e.g., surgery, psychotherapy, substance abuse treatment, or dialysis); rehabilitation services; or physical or occupational therapy;
- recuperating from an illness or an episodic manifestation of the disability;
- obtaining repairs on a wheelchair, accessible van, or prosthetic device;

⁴⁵ 29 C.F.R. pt. 1630 app. § 1630.2(o) (1997). See Cehrs v. Northeast Ohio Alzheimer's, 155 F.3d 775, 782, 8 AD Cas. (BNA) 825, 830-31 (6th Cir. 1998).

An employee who needs leave, or a part-time or modified schedule, as a reasonable accommodation also may be entitled to leave under the Family and Medical Leave Act. See Questions 21 and 23, [infra](#).

⁴⁶ See A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act, at 3.10(4), 8 FEP Manual (BNA) 405:6981, 7011 (1992) [hereinafter TAM].

If an employer cannot hold a position open during the entire leave period without incurring undue hardship, the employer must consider whether it has a vacant, equivalent position for which the employee is qualified and to which the employee can be reassigned to continue his/her leave for a specific period of time and then, at the conclusion of the leave, can be returned to this new position.⁴⁹

Example: An employee needs eight months of leave for treatment and recuperation related to a disability. The employer grants the request, but after four months the employer determines that it can no longer hold open the position for the remaining four months without incurring undue hardship. The employer must consider whether it has a vacant, equivalent position to which the employee can be reassigned for the remaining four months of leave, at the end of which time the employee would return to work in that new position. If an equivalent position is not available, the employer must look for a vacant position at a lower level. Continued leave is not required as a reasonable accommodation if a vacant position at a lower level is also unavailable.

19. Can an employer penalize an employee for work missed during leave taken as a reasonable accommodation?

No. To do so would be retaliation for the employee's use of a reasonable accommodation to which s/he is entitled under the law.⁵⁰ Moreover, such punishment would make the leave an ineffective accommodation, thus making an employer liable for failing to provide a reasonable accommodation.⁵¹

Example A: A salesperson took five months of leave as a reasonable accommodation. The company compares the sales records of all salespeople over a one-year period, and any employee whose sales fall

⁴⁹ See EEOC Enforcement Guidance: Workers' Compensation and the ADA at 16, 8 FEP Manual (BNA) 405:7391, 7399 (1996) [hereinafter Workers' Compensation and the ADA]. See also pp. 37-45, *infra*, for information on reassignment as a reasonable accommodation.

⁵⁰ Cf. *Kiel v. Select Artificials*, 142 F.3d 1077, 1080, 8 AD Cas. (BNA) 43, 44 (8th Cir. 1998).

⁵¹ See *Criado v. IBM*, 145 F.3d 437, 444-45, 8 AD Cas. (BNA) 336, 341 (1st Cir. 1998).

does not interfere with the employee's ability to address his/her medical needs. The employer is obligated, however, to restore the employee's full duties or to return the employee to his/her original position once s/he no longer needs the reasonable accommodation.

Example A: An employee with emphysema requests ten weeks of leave for surgery and recuperation related to his disability. In discussing this request with the employer, the employee states that he could return to work after seven weeks if, during his first three weeks back, he could work part-time and eliminate two marginal functions that require lots of walking. If the employer provides these accommodations, then it can require the employee to return to work after seven weeks.

Example B: An employee's disability is getting more severe and her doctor recommends surgery to counteract some of the effects. After receiving the employee's request for leave for the surgery, the employer proposes that it provide certain equipment which it believes will mitigate the effects of the disability and delay the need for leave to get surgery. The employer's proposed accommodation is not effective because it interferes with the employee's ability to get medical treatment.

21. How should an employer handle leave for an employee covered by both the ADA and the Family and Medical Leave Act (FMLA)?⁵⁵

An employer should determine an employee's rights under each statute separately, and then consider whether the two statutes overlap regarding the appropriate actions to take.⁵⁶

Under the ADA, an employee who needs leave related to his/her disability is entitled to such leave if there is no other effective accommodation and the leave will not cause undue hardship. An employer must allow the individual to use any accrued paid leave first, but, if that is insufficient to cover the entire period, then the employer should grant unpaid leave. An employer must continue an

⁵⁵ For more detailed information on issues raised by the interplay between these statutes, refer to the FMLA/ADA Fact Sheet listed in the Appendix.

⁵⁶ Employers should remember that many employees eligible for FMLA leave will not be entitled to leave as a reasonable accommodation under the ADA, either because they do not meet the ADA's definition of disability or, if they do have an ADA disability, the need for leave is unrelated to that disability.

return the employee to her original position. Unless the employer can show that this would cause an undue hardship, or that the employee is no longer qualified for her original position (with or without reasonable accommodation), the employer must reinstate the employee to her original position.

Example C: An employee with an ADA disability has taken 12 weeks of FMLA leave. He notifies his employer that he is ready to return to work, but he no longer is able to perform the essential functions of his position or an equivalent position. Under the FMLA, the employer could terminate his employment,⁵⁹ but under the ADA the employer must consider whether the employee could perform the essential functions with reasonable accommodation (e.g., additional leave, part-time schedule, job restructuring, or use of specialized equipment). If not, the ADA requires the employer to reassign the employee if there is a vacant position available for which he is qualified, with or without reasonable accommodation, and there is no undue hardship.

Modified or Part-Time Schedule

22. Must an employer allow an employee with a disability to work a modified or part-time schedule as a reasonable accommodation, absent undue hardship?

Yes.⁶⁰ A modified schedule may involve adjusting arrival or departure times, providing periodic breaks, altering when certain functions are performed, allowing an employee to use accrued paid leave, or providing additional unpaid leave. An employer must provide a modified or part-time schedule when required as a reasonable accommodation, absent undue hardship, even if it does not provide such schedules for other employees.

Example A: An employee with HIV infection must take medication on a strict schedule. The medication causes extreme nausea about one hour after ingestion, and generally lasts about 45 minutes. The employee asks that he be allowed to take a daily 45-minute break when the nausea occurs. The employer must grant this request absent undue hardship.

⁵⁹ 29 C.F.R. § 825.702(c)(4) (1997).

⁶⁰ See Ralph v. Lucent Technologies, Inc., 135 F.3d 166, 172, 7 AD Cas. (BNA) 1345, 1349 (1st Cir. 1998) (a modified schedule is a form of reasonable accommodation).

disability, she needs to work in the daytime. The essential function of her position, operating the printing presses, requires that she work at night because the newspaper cannot be printed during the daytime hours. Since the employer cannot modify her hours, it must consider whether it can reassign her to a different position.

23. How should an employer handle requests for modified or part-time schedules for an employee covered by both the ADA and the Family and Medical Leave Act (FMLA)?⁶³

An employer should determine an employee's rights under each statute separately, and then consider whether the two statutes overlap regarding the appropriate actions to take.

Under the ADA, an employee who needs a modified or part-time schedule because of his/her disability is entitled to such a schedule if there is no other effective accommodation and it will not cause undue hardship. If there is undue hardship, the employer must reassign the employee if there is a vacant position for which s/he is qualified and which would allow the employer to grant the modified or part-time schedule (absent undue hardship).⁶⁴ An employee receiving a part-time schedule as a reasonable accommodation is entitled only to the benefits, including health insurance, that other part-time employees receive. Thus, if non-disabled part-time workers are not provided with health insurance, then the employer does not have to provide such coverage to an employee with a disability who is given a part-time schedule as a reasonable accommodation.

Under the FMLA, an eligible employee is entitled to take leave intermittently or on a part-time basis, when medically necessary, until s/he has used up the equivalent of 12 workweeks in a 12-month period. When such leave is foreseeable based on planned medical treatment, an employer may require the employee to temporarily transfer (for the duration of the leave) to an available alternative position, with equivalent pay and benefits, for which the employee

⁶³ For more detailed information on issues raised by the interplay between these statutes, refer to the FMLA/ADA Fact Sheet listed in the Appendix.

⁶⁴ See *infra* pp. 37-45 for more information on reassignment, including under what circumstances an employer and employee may voluntarily agree that a transfer is preferable to having the employee remain in his/her current position.

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. For example, it would be a reasonable accommodation to modify a policy requiring employees to schedule vacation time in advance if an otherwise qualified individual with a disability needed to use accrued vacation time on an unscheduled basis because of disability-related medical problems, barring undue hardship.⁶⁸ Furthermore, an employer may be required to provide additional leave to an employee with a disability as a reasonable accommodation in spite of a "no-fault" leave policy, unless the provision of such leave would impose an undue hardship.⁶⁹

In some instances, an employer's refusal to modify a workplace policy, such as a leave or attendance policy, could constitute disparate treatment as well as a failure to provide a reasonable accommodation. For example, an employer may have a policy requiring employees to notify supervisors before 9:00 a.m. if they are unable to report to work. If an employer would excuse an employee from complying with this policy because of emergency hospitalization due to a car accident, then the employer must do the same thing when the emergency hospitalization is due to a disability.⁷⁰

⁶⁸ See Dutton v. Johnson County Bd. of Comm'rs, 868 F. Supp. 1260, 1264-65, 3 AD Cas. (BNA) 1614, 1618 (D. Kan. 1994).

⁶⁹ See 29 C.F.R. pt. 1630 app. § 1630.15(b), (c) (1997). See also Question 17, supra.

⁷⁰ But cf. Miller v. Nat'l Casualty Co., 61 F.3d 627, 629-30, 4 AD Cas. (BNA) 1089, 1090 (8th Cir. 1995) (court refuses to find that employee's sister had requested reasonable accommodation despite the fact that the sister informed the employer that the employee was having a medical crisis necessitating emergency hospitalization).

An employee must be "qualified" for the new position. An employee is "qualified" for a position if s/he: (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the new position, with or without reasonable accommodation.⁷⁴ The employee does not need to be the best qualified individual for the position in order to obtain it as a reassignment.

There is no obligation for the employer to assist the individual to become qualified. Thus, the employer does not have to provide training so that the employee acquires necessary skills to take a job.⁷⁵ The employer, however, would have to provide an employee with a disability who is being reassigned with any training that is normally provided to anyone hired for or transferred to the position.

Example A: An employer is considering reassigning an employee with a disability to a position which requires the ability to speak Spanish in order to perform an essential function. The employee never learned Spanish and wants the employer to send him to a course to learn Spanish. The employer is not required to provide this training as part of the obligation to make a reassignment. Therefore, the employee is not qualified for this position.

Example B: An employer is considering reassigning an employee with a disability to a position in which she will contract for goods and services. The employee is qualified for the position. The employer has its own specialized rules regarding contracting that necessitate training all individuals hired for these positions. In this situation, the employer must provide the employee with this specialized training.

reassignment either when reasonable accommodation in an employee's current job would cause undue hardship or when it would not be possible. See Aka v. Washington Hosp. Ctr., 156 F.3d 1284, 1300-01, 8 AD Cas. (BNA) 1093, 1107-08 (D.C. Cir. 1998); Dalton v. Subaru-Isuzu Automotive, Inc., 141 F.3d 667, 678, 7 AD Cas. (BNA) 1872, 1880 (7th Cir. 1998); see also ADA and Psychiatric Disabilities, supra note 24, at 28, 8 FEP Manual (BNA) 405:7476; Workers' Compensation and the ADA, supra note 49, at 17-18, 8 FEP Manual (BNA) 405:7399-7400.

⁷⁴ 29 C.F.R. § 1630.2(m) (1997); 29 C.F.R. pt. 1630 app. §§ 1630.2(m), 1630.2(o) (1997). See Stone v. Mount Vernon, 118 F.3d 92, 100-01, 6 AD Cas. (BNA) 1685, 1693 (2d Cir. 1997).

⁷⁵ See Quintana v. Sound Distribution Corp., 6 AD Cas. (BNA) 842, 846 (S.D.N.Y. 1997).

the employer decides to advertise the position, it must allow the individual to apply for that position and give the application the consideration it deserves.)

The employer must reassign the individual to a vacant position that is equivalent in terms of pay, status, or other relevant factors (e.g., benefits, geographical location) if the employee is qualified for the position. If there is no vacant equivalent position, the employer must reassign the employee to a vacant lower level position for which the individual is qualified. Assuming there is more than one vacancy for which the employee is qualified, the employer must place the individual in the position that comes closest to the employee's current position in terms of pay, status, etc.⁷⁹ If it is unclear which position comes closest, the employer should consult with the employee about his/her preference before determining the position to which the employee will be reassigned. Reassignment does not include giving an employee a promotion. Thus, an employee must compete for any vacant position that would constitute a promotion.

25. Is a probationary employee entitled to reassignment?

Employers cannot deny a reassignment to an employee solely because s/he is designated as "probationary."⁸⁰ An employee with a disability is eligible for reassignment to a new position, regardless of whether s/he is considered "probationary," as long as the employee adequately performed the essential functions of the position, with or without reasonable accommodation, before the need for a reassignment arose.

The longer the period of time in which an employee has adequately performed the essential functions, with or without reasonable accommodation, the more likely it is that reassignment is appropriate if the employee becomes unable to continue performing the essential functions of the current position due to a disability. If, however, the probationary employee has never adequately performed the essential functions, with or without reasonable accommodation, then s/he is not entitled to reassignment because s/he was never "qualified" for the original position. In this situation, the employee is similar to an applicant

⁷⁹ See 29 C.F.R. pt. 1630 app. § 1630.2(o) (1997).

⁸⁰ The current regulation governing reassignment of federal employees states that reassignment is available to "nonprobationary" employees. See 29 C.F.R. §§ 1614.203(g) (1997). This regulation does not state the applicable ADA non-discrimination standard. See note 71, *supra*.

27. Is an employer's obligation to offer reassignment to a vacant position limited to those vacancies within an employee's office, branch, agency, department, facility, personnel system (if the employer has more than a single personnel system), or geographical area?

No. This is true even if the employer has a policy prohibiting transfers from one office, branch, agency, department, facility, personnel system, or geographical area to another. The ADA contains no language limiting the obligation to reassign only to positions within an office, branch, agency, etc.⁸² Rather, the extent to which an employer must search for a vacant position will be an issue of undue hardship.⁸³ If an employee is being reassigned to a different geographical area, the employee must pay for any relocation expenses unless the employer routinely pays such expenses when granting voluntary transfers to other employees.

28. Does an employer have to notify an employee with a disability about vacant positions, or is it the employee's responsibility to learn what jobs are vacant?

The employer is in the best position to know which jobs are vacant or will

⁸² 42 U.S.C. § 12111(9)(B) (1994); 29 C.F.R. § 1630.2(o)(2)(ii) (1997); see Hendricks-Robinson v. Excel Corp., 154 F.3d 685, 695, 8 AD Cas. (BNA) 875, 883 (7th Cir. 1998); see generally Dalton v. Subaru-Isuzu Automotive, Inc., 141 F.3d 667, 677-78, 7 AD Cas. (BNA) 1872, 1880-81 (7th Cir. 1998).

⁸³ See Gile v. United Airlines, Inc., 95 F.3d 492, 499, 5 AD Cas. (BNA) 1466, 1472 (7th Cir. 1996); see generally United States v. Denver, 943 F. Supp. 1304, 1311-13, 6 AD Cas. (BNA) 245, 251-52 (D. Colo. 1996).

Some courts have limited the obligation to provide a reassignment to positions within the same department or facility in which the employee currently works, except when the employer's standard practice is to provide inter-department or inter-facility transfers for all employees. See, e.g., Emrick v. Libbey-Owens-Ford Co., 875 F. Supp. 393, 398, 4 AD Cas. (BNA) 1, 4-5 (E.D. Tex. 1995). However, the ADA requires modification of workplace policies, such as transfer policies, as a form of reasonable accommodation. See Question 24, supra. Therefore, policies limiting transfers cannot be a *per se* bar to reassigning someone outside his/her department or facility. Furthermore, the ADA requires employers to provide reasonable accommodations, including reassignment, regardless of whether such accommodations are routinely granted to non-disabled employees. See Question 26, supra.

employer has completed its search, identified whether there are any vacancies (including any positions that will become vacant in a reasonable amount of time), notified the employee of the results, and either offered an appropriate vacancy to the employee or informed him/her that no appropriate vacancies are available, the employer will have fulfilled its obligation.

29. Does reassignment mean that the employee is permitted to compete for a vacant position?

No. Reassignment means that the employee gets the vacant position if s/he is qualified for it. Otherwise, reassignment would be of little value and would not be implemented as Congress intended.⁸⁷

include: use of accumulated paid leave, use of unpaid leave, or a temporary assignment to a light duty position. Employers also may choose to take actions that go beyond the ADA's requirements, such as eliminating an essential function of the employee's current position, to enable an employee to continue working while a reassignment is sought.

⁸⁷ 42 U.S.C. § 12111(9)(b) (1994); 29 C.F.R. pt. 1630 app. § 1630.2(o) (1997). See Senate Report, supra note 6, at 31 ("If an employee, because of disability, can no longer perform the essential functions of the job that she or he has held, a transfer to another vacant job for which the person is qualified may prevent the employee from being out of work and the employer from losing a valuable worker."). See Wood v. County of Alameda, 5 AD Cas. (BNA) 173, 184 (N.D. Cal. 1995) (when employee could no longer perform job because of disability, she was entitled to reassignment to a vacant position, not simply an opportunity to "compete"); cf. Aka v. Washington Hosp. Ctr., 156 F.3d 1284, 1304-05, 8 AD Cas. (BNA) 1093, 1110-11 (D.C. Cir. 1998) (the court, in interpreting a collective bargaining agreement provision authorizing reassignment of disabled employees, states that "[a]n employee who is allowed to compete for jobs precisely like any other applicant has not been 'reassigned'"); United States v. Denver, 943 F. Supp. 1304, 1310-11, 6 AD Cas. (BNA) 245, 250 (D. Colo. 1996) (the ADA requires employers to move beyond traditional analysis and consider reassignment as a method of enabling a disabled worker to do a job).

Some courts have suggested that reassignment means simply an opportunity to compete for a vacant position. See, e.g., Daugherty v. City of El Paso, 56 F.3d 695, 700, 4 AD Cas. (BNA) 993, 997 (5th Cir. 1995). Such an interpretation nullifies the clear statutory language stating that reassignment is a form of reasonable accommodation. Even without the ADA, an employee with a disability may have the right to compete for a vacant position.

32. Does an employer have to change a person's supervisor as a form of reasonable accommodation?

No. An employer does not have to provide an employee with a new supervisor as a reasonable accommodation. Nothing in the ADA, however, prohibits an employer from doing so. Furthermore, although an employer is not required to change supervisors, the ADA may require that supervisory methods be altered as a form of reasonable accommodation.⁹¹ Also, an employee with a disability is protected from disability-based discrimination by a supervisor, including disability-based harassment.

Example: A supervisor frequently schedules team meetings on a day's notice – often notifying staff in the afternoon that a meeting will be held on the following morning. An employee with a disability has missed several meetings because they have conflicted with previously-scheduled physical therapy sessions. The employee asks that the supervisor give her two to three days' notice of team meetings so that, if necessary, she can reschedule the physical therapy sessions. Assuming no undue hardship would result, the supervisor must make this reasonable accommodation.

33. Does an employer have to allow an employee with a disability to work at home as a reasonable accommodation?

An employer must modify its policy concerning where work is performed if such a change is needed as a reasonable accommodation, but **only if this accommodation would be effective and would not cause an undue hardship.**⁹² Whether this accommodation is effective will depend on whether the essential functions of the position can be performed at home. There are certain jobs in which the essential functions can only be performed at the work site -- e.g., food server, cashier in a store. For such jobs, allowing an employee to work at home is not effective because it does not enable an employee to perform his/her essential functions. Certain considerations may be critical in determining

⁹¹ For a discussion on ways to modify supervisory methods, see ADA and Psychiatric Disabilities, supra note 24, at 26-27, 8 FEP Manual (BNA) 405:7475.

⁹² See 29 C.F.R. § 1630.2(o)(1)(ii), (2)(ii) (1997) (modifications or adjustments to the manner or circumstances under which the position held or desired is customarily performed that enable a qualified individual with a disability to perform the essential functions).

future, barring undue hardship, except where the punishment for the violation is termination.⁹⁴ Since reasonable accommodation is always prospective, an employer is not required to excuse past misconduct even if it is the result of the individual's disability.⁹⁵ Possible reasonable accommodations could include adjustments to starting times, specified breaks, and leave if these accommodations will enable an employee to comply with conduct rules.⁹⁶

Example: An employee with major depression is often late for work because of medication side-effects that make him extremely groggy in the morning. His scheduled hours are 9:00 a.m. to 5:30 p.m., but he arrives at 9:00, 9:30, 10:00, or even 10:30 on any given day. His job responsibilities involve telephone contact with the company's traveling sales representatives, who depend on him to answer urgent marketing questions and expedite special orders. The employer disciplines him for tardiness, stating that continued failure to arrive promptly during the next month will result in termination of his employment. The individual then explains that he was late because of a disability and needs to work on a

⁹⁴ See 29 C.F.R. § 1630.15(d) (1997).

⁹⁵ See Siefken v. Arlington Heights, 65 F.3d 664, 666, 4 AD Cas. (BNA) 1441, 1442 (7th Cir. 1995). Therefore, it may be in the employee's interest to request a reasonable accommodation before performance suffers or conduct problems occur. For more information on conduct standards, including when they are job-related and consistent with business necessity, see ADA and Psychiatric Disabilities, supra note 24, at 29-32, 8 FEP Manual (BNA) 405:7476-78.

An employer does not have to offer a "firm choice" or a "last chance agreement" to an employee who performs poorly or who has engaged in misconduct because of alcoholism. "Firm choice" or "last chance agreements" involve excusing past performance or conduct problems resulting from alcoholism in exchange for an employee's receiving substance abuse treatment and refraining from further use of alcohol. Violation of such an agreement generally warrants termination. Since the ADA does not require employers to excuse poor performance or violation of conduct standards that are job-related and consistent with business necessity, an employer has no obligation to provide "firm choice" or a "last chance agreement" as a reasonable accommodation. See Johnson v. Babbitt, EEOC Docket No. 03940100 (March 28, 1996). However, an employer may choose to offer an employee a "firm choice" or a "last chance agreement."

⁹⁶ See ADA and Psychiatric Disabilities, supra note 24, at 31-32, 8 FEP Manual (BNA) 405:7477-78.

However, if an employee with a disability, with or without reasonable accommodation, cannot perform the essential functions of the position or poses a direct threat in the absence of medication, treatment, or an assistive device, then s/he is unqualified.

38. Must an employer provide a reasonable accommodation that is needed because of the **side effects of medication or treatment related to the disability**, or because of symptoms or other medical conditions resulting from the underlying disability?

Yes. The side effects caused by the medication that an employee must take because of the disability are limitations resulting from the disability. Reasonable accommodation extends to all limitations resulting from a disability.

Example A: An employee with cancer undergoes chemotherapy twice a week, which causes her to be quite ill afterwards. The employee requests a modified schedule -- leave for the two days a week of chemotherapy. The treatment will last six weeks. Unless it can show undue hardship, the employer must grant this request.

Similarly, any symptoms or related medical conditions resulting from the disability that cause limitations may also require reasonable accommodation.⁹⁹

Example B: An employee, as a result of insulin-dependent diabetes, has developed background retinopathy (a vision impairment). The employee, who already has provided documentation showing his diabetes is a disability, requests a device to enlarge the text on his computer screen. The employer can request documentation that the retinopathy is related to the diabetes but the employee does not have to show that the retinopathy is an independent disability under the ADA. Since the retinopathy is a consequence of the diabetes (an ADA disability), the request must be granted unless undue hardship can be shown.

complex. There are many reasons why a person would choose to forgo treatment, including expense and serious side effects.

⁹⁹ See Vande Zande v. Wisconsin Dep't of Admin., 44 F.3d 538, 544, 3 AD Cas. (BNA) 1636, 1639 (7th Cir. 1995).

Miller." The employer knows about the disability, suspects that the performance problem is a result of the disability, and knows that this employee is unable to ask for a reasonable accommodation because of his mental retardation. The employer asks the employee about mixing up the two names and asks if it would be helpful to spell the first name of each person. When the employee says that would be better, the employer, as a reasonable accommodation, instructs the receptionist to write the full first name when messages are left for one of the Messrs. Miller.

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

An employer may ask an employee with a known disability whether s/he needs a reasonable accommodation when it reasonably believes that the employee may need an accommodation. For example, an employer could ask a deaf employee who is being sent on a business trip if s/he needs reasonable accommodation. Or, if an employer is scheduling a luncheon at a restaurant and is uncertain about what questions it should ask to ensure that the restaurant is accessible for an employee who uses a wheelchair, the employer may first ask the employee. An employer also may ask an employee with a disability who is having performance or conduct problems if s/he needs reasonable accommodation.¹⁰²

41. May an employer tell other employees that an individual is receiving a reasonable accommodation when employees ask questions about a coworker with a disability?

No. An employer may not disclose that an employee is receiving a reasonable accommodation 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.¹⁰³

¹⁰² 29 C.F.R. pt. 1630 app. § 1630.9 (1997).

¹⁰³ 42 U.S.C. § 12112(d)(3)(B), (d)(4)(C) (1994); 29 C.F.R. § 1630.14(b)(1) (1997). The limited exceptions to the ADA confidentiality requirements are: (1) supervisors and managers may be told about necessary restrictions on the work or duties of the employee and about necessary accommodations; (2) first aid and safety personnel may be told if the disability might require emergency treatment; and

UNDUE HARDSHIP ISSUES¹⁰⁴

An employer does not have to provide a reasonable accommodation that would cause an "undue hardship" to the employer. Generalized conclusions will not suffice to support a claim of undue hardship. Instead, undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.¹⁰⁵ A determination of undue hardship should be based on several factors, including:

- the nature and cost of the accommodation needed;
- the overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility;
- the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
- the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer;
- the impact of the accommodation on the operation of the facility.¹⁰⁶

¹⁰⁴ The discussions and examples in this section assume that there is only one effective accommodation.

¹⁰⁵ See 29 C.F.R. pt. 1630 app. §1630.15(d) (1996); see also Stone v. Mount Vernon, 118 F.3d 92, 101, 6 AD Cas. (BNA) 1685, 1693 (2d Cir. 1997) (an employer who has not hired any persons with disabilities cannot claim undue hardship based on speculation that if it were to hire several people with disabilities it may not have sufficient staff to perform certain tasks); Bryant v. Better Business Bureau of Greater Maryland, 923 F. Supp. 720, 735, 5 AD Cas. (BNA) 625, 634 (D. Md. 1996).

¹⁰⁶ See 42 U.S.C. § 12111(10)(B) (1994); 29 C.F.R. § 1630.2(p)(2) (1997); 29 C.F.R. pt. 1630 app. § 1630.2(p) (1997); TAM, supra note 46, at 3.9, 8 FEP Manual (BNA) 405:7005-07.

assignments in a timely manner. Since the employer cannot show significant disruption to its operation, there is no undue hardship.¹¹⁰

Example B: A convenience store clerk with multiple sclerosis requests that he be allowed to go from working full-time to part-time as a reasonable accommodation because of his disability. The store assigns two clerks per shift, and if the first clerk's hours are reduced, the second clerk's workload will increase significantly beyond his ability to handle his responsibilities. The store determines that such an arrangement will result in inadequate coverage to serve customers in a timely manner, keep the shelves stocked, and maintain store security. Thus, the employer can show undue hardship based on the significant disruption to its operations and, therefore, can refuse to reduce the employee's hours. The employer, however, should explore whether any other reasonable accommodation will assist the store clerk without causing undue hardship.

42. 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 the result of modifying one employee's work hours (or granting leave) is to prevent other employees from doing their jobs, then the significant disruption to the operations of the employer constitutes an undue hardship.

Example A: A crane operator, due to his disability, requests an adjustment in his work schedule so that he starts work at 8:00 a.m. rather than 7:00 a.m., and finishes one hour later in the evening. The crane operator works with three other employees who cannot perform their jobs without the crane operator. As a result, if the employer grants this requested accommodation, it would have to require the other three workers to adjust their hours, find other work for them to do from 7:00 to 8:00, or have the workers do nothing. The ADA does not require the employer to take any of these actions because they all significantly disrupt the operations of the business. Thus, the employer can deny the requested accommodation, but should discuss with the employee if there are other possible accommodations that would not result in undue hardship.

¹¹⁰ Failure to transfer marginal functions because of its negative impact on the morale of other employees also could constitute disparate treatment when similar morale problems do not stop an employer from reassigning tasks in other situations.

their employers to inform them of their progress and discuss, if necessary, the need for continued leave beyond what might have been granted originally.¹¹²

Example A: An experienced chef at a top restaurant requests leave for treatment of her disability but cannot provide a fixed date of return. The restaurant can show that this request constitutes undue hardship because of the difficulty of replacing, even temporarily, a chef of this caliber. Moreover, it leaves the employer unable to determine how long it must hold open the position or to plan for the chef's absence. Therefore, the restaurant can deny the request for leave as a reasonable accommodation.

Example B: An employee requests eight weeks of leave for surgery for his disability. The employer grants the request. During surgery, serious complications arise that require a lengthier period of recuperation than originally anticipated, as well as additional surgery. The employee contacts the employer after three weeks of leave to ask for an additional ten to fourteen weeks of leave (*i.e.*, a total of 18 to 22 weeks of leave). The employer must assess whether granting additional leave causes an undue hardship.

44. Does a cost-benefit analysis determine whether a reasonable accommodation will cause undue hardship?

No. A cost-benefit analysis assesses the cost of a reasonable accommodation in relation to the perceived benefit to the employer and the employee. Neither the statute nor the legislative history supports a cost-benefit analysis to determine whether a specific accommodation causes an undue hardship.¹¹³

¹¹² See Criado v. IBM, 145 F.3d 437, 444-45, 8 AD Cas. (BNA) 336, 341 (1st Cir. 1998).

¹¹³ The ADA's definition of undue hardship does not include any consideration of a cost-benefit analysis. See 42 U.S.C. § 12111(10) (1994); see also House Education and Labor Report, *supra* note 6, at 69 ("[T]he committee wishes to make clear that the fact that an accommodation is used by only one employee should not be used as a negative factor counting in favor of a finding of undue hardship.").

Furthermore, the House of Representatives rejected a cost-benefit approach by defeating an amendment which would have presumed undue hardship if a reasonable accommodation cost more than 10% of the employee's annual salary. See 136 Cong.

46. Can an employer claim undue hardship solely because a reasonable accommodation would require it to make changes to property owned by someone else?

No, an employer cannot claim undue hardship solely because a reasonable accommodation would require it to make changes to property owned by someone else. In some situations, an employer will have the right under a lease or other contractual relationship with the property owner to make the type of changes that are needed. If this is the case, the employer should make the changes, assuming no other factors exist that would make the changes too difficult or costly. If the contractual relationship between the employer and property owner requires the owner's consent to the kinds of changes that are required, or prohibits them from being made, then the employer must make good faith efforts either to obtain the owner's permission or to negotiate an exception to the terms of the contract. If the owner refuses to allow the employer to make the modifications, the employer may claim undue hardship. Even in this situation, however, the employer must still provide another reasonable accommodation, if one exists, that would not cause undue hardship.

Example A: X Corp., a travel agency, leases space in a building owned by Z Co. One of X Corp.'s employees becomes disabled and needs to use a wheelchair. The employee requests as a reasonable accommodation that several room dividers be moved to make his work space easily accessible. X Corp.'s lease specifically allows it to make these kinds of physical changes, and they are otherwise easy and inexpensive to make. The fact that X Corp. does not own the property

the seniority provisions of a collective bargaining agreement. See Eckles v. Consolidated Rail Corp., 94 F.3d 1041, 1048, 5 AD Cas. (BNA) 1367, 1372 (7th Cir. 1996); Kralik v. Durbin, 130 F.3d 76, 83, 7 AD Cas. (BNA) 1040, 1045-46 (3d Cir. 1997). These decisions create a virtual *per se* rule that the ADA does not mandate as a reasonable accommodation an action that infringes on the seniority rights of another employee in a collective bargaining agreement. In the EEOC's view, such a *per se* rule nullifies Congress' intent that undue hardship always be determined on a case-by-case basis. See House Judiciary Report, supra note 6, at 42. Indeed, Congress believed employers could consider the terms of a collective bargaining agreement as one factor, but not the determining factor, in assessing undue hardship. See Senate Report, supra note 6, at 32; House Education and Labor Report, supra note 6, at 63. Finally, both Eckles and Kralik rely heavily upon pre-ADA Rehabilitation Act case law, despite the fact that Congress amended that statute by incorporating the ADA's employment discrimination provisions. See 29 U.S.C. §§ 791(g), 793(d), 794(d) (1994).

INSTRUCTIONS FOR INVESTIGATORS

When assessing whether a Respondent has violated the ADA by denying a reasonable accommodation to a Charging Party, investigators should consider the following:

- **Is the Charging Party "otherwise qualified" (i.e., is the Charging Party qualified for the job except that, because of disability, s/he needs a reasonable accommodation to perform the position's essential functions)?**
- **Did the Charging Party, or a representative, request a reasonable accommodation (i.e., did the Charging Party let the employer know that s/he needed an adjustment or change at work for a reason related to a medical condition)? [see Questions 1-4]**
 - * **Did the Respondent request documentation of the Charging Party's disability and/or functional limitations? If yes, was the documentation provided? Did the Respondent have a legitimate reason for requesting documentation? [see Questions 6-8]**
 - * **What specific type of reasonable accommodation, if any, did the Charging Party request?**
 - * **Was there a nexus between the reasonable accommodation requested and the functional limitations resulting from the Charging Party's disability? [see Question 6]**
 - * **Was the need for reasonable accommodation related to the use of medication, side effects from treatment, or symptoms related to a disability? [see Questions 36-38]**
- **For what purpose did the Charging Party request a reasonable accommodation:**
 - * **for the application process? [see Questions 12-13]**
 - * **in connection with aspects of job performance? [see Questions 16-24, 32-33]**
 - * **in order to enjoy the benefits and privileges of employment? [see Questions 14-15]**
- **Should the Respondent have initiated the interactive process, or provided a reasonable accommodation, even if the Charging Party did not ask for an**

equivalent to the Charging Party's original position?

- If the Respondent is claiming undue hardship [see generally Questions 42-46 and accompanying text]:
 - * what evidence has the Respondent produced showing that providing a specific reasonable accommodation would entail significant difficulty or expense?
 - * if a modified schedule or leave is the reasonable accommodation, is undue hardship based on the impact on the ability of other employees to do their jobs? [see Question 42]
 - * if leave is the reasonable accommodation, is undue hardship based on the amount of leave requested? [see Question 43]
 - * is undue hardship based on a conflict between the reasonable accommodation and the provisions of a collective bargaining agreement? [see Question 45]
 - * is undue hardship based on the fact that providing the reasonable accommodation requires changes to property owned by an entity other than the Respondent? [see Question 46]
 - * if the Respondent claims that a particular reasonable accommodation would result in undue hardship, is there another reasonable accommodation that Respondent could have provided that would not have resulted in undue hardship?
- Based on the evidence obtained in answers to the questions above, is the Charging Party a **qualified** individual with a disability (i.e., can the Charging Party perform the essential functions of the position with or without reasonable accommodation)?

Internal Revenue Service (For information on tax credits and deductions for providing certain reasonable accommodations)
(202) 622-6060 (Voice)

Job Accommodation Network (JAN)
1-800-232-9675 (Voice/TT)
<http://janweb.icdi.wvu.edu/>.

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

ADA Disability and Business Technical Assistance Centers (DBTACs)
1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf
(301) 608-0050 (Voice/TT)

The Registry offers information on locating and using interpreters and transliteration services.

RESNA Technical Assistance Project
(703) 524-6686 (Voice) (703) 524-6639 (TT)
<http://www.resna.org/hometa1.htm>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

- * information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases)

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