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Reasonable Accommodation and Undue Hardship

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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Reasonable Accommodation and Undue Hardship

Reference Number: CTAS-2018

A qualified individual with a disability is a person who has the skills and education to perform the essential functions of a job with or without reasonable accommodations as long as the reasonable accommodations do not present an undue hardship to the employer. 42 U.S.C. § 12111(8)

"Reasonable accommodation" and "undue hardship" are two key terms in the ADA. Employers should know when to ask if a reasonable accommodation is needed. After explaining the hiring process, an employer may ask all the applicants if they will need a reasonable accommodation to assist them in completing the application process.

During the hiring process and before a job offer is extended, an employer should not ask an applicant if a reasonable accommodation is needed to perform essential job functions unless the employer knows that the applicant has a disability. An employer may know about a disability because it's obvious or the applicant may have voluntarily disclosed the information.

When an applicant is hired, the employer may ask if a reasonable accommodation is needed to perform the job but all new employees in the same job category must be asked this question.

Reasonable Accommodation Definition

Reference Number: CTAS-2019

A reasonable accommodation is making an adjustment to a job or work environment that enables a qualified employee with a disability to perform the essential job functions. It may also be necessary for an employer to make a reasonable accommodation so that a qualified applicant can participate in the application process. Reasonable accommodations help ensure that qualified individuals with disabilities have rights and privileges equal to those of nondisabled employees. Included in these rights are equal access to information communicated in the work place and access to training programs. 29 C.F.R. § 1630.2(o).

A reasonable accommodation will remove a workplace barrier for an individual with a disability. Workplace barriers include physical objects as well as policies and procedures.

Many disabilities are not obvious and even when a disability is obvious, the individual may not need a reasonable accommodation to perform essential job functions. Reasonable accommodations are provided on an individual basis. An employer's obligation to provide a reasonable accommodation applies only to known physical or mental disabilities. An employer should inquire about the need for a reasonable accommodation when—

- The employer knows the employee has a disability.
- The employer suspects a disability is the cause of unsatisfactory job performance.
- The employer knows a disability prevents the employee from requesting a reasonable accommodation.

If the employee with the disability states that a reasonable accommodation is not needed, the employer has fulfilled its obligation.

When a request for a reasonable accommodation is made, it is up to the employer to determine the appropriate accommodation. There are three categories of reasonable accommodations—

1. Modifications or adjustments to the job application process.
2. Modifications or adjustments to the work environment so an individual with a disability can perform the essential functions of a job.
3. Modifications or adjustments to the work environment so an individual with a disability can enjoy equal benefits and privileges.

42 U.S.C. § 12111(9)(A).

The following are examples of reasonable accommodations:

1. Job restructuring (shifting minor responsibilities to others, altering when/how a task is performed).

2. Making existing facilities regularly used by employees readily accessible.
3. Providing additional unpaid leave, when it is not an undue hardship. Paid leave is not required, and an employer is not required to grant leave when it can make another accommodation that will allow the employee to keep working, such as a temporary transfer to another position.
4. Modified or part-time schedule.
5. Modifying workplace policy.
6. Re-assignment to a vacant position – The employee must be qualified for the position. The employer is not required to create a new job or bump an employee out of a position. The employer does not have to offer a promotion. The re-assignment should be to a position that has equal pay and status, but if a comparable position is not vacant the employer may assign the employee to a vacant position with lower pay if the employee meets the job qualifications.

42 U.S.C. § 12111(9)(B).

An employer can not require an employee with a disability to accept a reasonable accommodation if the accommodation is not requested or needed. However, if an employee with a disability turns down an accommodation needed to perform the essential functions of the job, they may be considered not qualified for the job.

Examples of things that are not considered reasonable accommodations include—

1. Elimination of a primary job responsibility (an "essential function" of the position).
2. Lowering production standards (but an employer may be required to make accommodations to allow disabled employees to meet the standards).
3. Providing personal use items such as wheelchairs, eyeglasses, hearing aids or similar devices.

Asking for an Accommodation

Reference Number: CTAS-2020

Employers generally only have to provide a reasonable accommodation when one is requested by a qualified individual with a disability. Individuals with disabilities may request a reasonable accommodation at any time during the employment process, including the application process. The request is generally a statement in plain English. It does not have to include the terms "ADA" or "reasonable accommodation". While the request does not have to be in writing, employers may prefer receiving something in writing to document the request. Family members, friends, and counselors may request an accommodation for an individual with a disability.

Once a request is made, the employer may want confirmation that the individual's medical condition meets the ADA's definition of disability. An employer is entitled to ask for medical documentation of the disability and its limitations if the disability is not obvious. If the medical condition does not meet the ADA's definition of disability, then a reasonable accommodation is not required.

Employer's can use this form to request medical documentation.

After receiving the request for reasonable accommodation and verifying that the condition meets the definition of disability, usually the employer and the individual with the disability discuss possible reasonable accommodations to try to determine what accommodation might work best. During this conversation it is important for the individual with the disability to describe the problems posed by the workplace barrier.

If the employer does not receive sufficient information, an explanation as to what additional information is needed should be provided to the individual with the disability. The employer should limit requests for information to the disability in question.

Providing Reasonable Accommodation

Reference Number: CTAS-2021

The ADA does not require employers to have specific procedures to provide a reasonable accommodation but generally written procedures are helpful. The Amendments Act added a provision to the ADA stating that an accommodation is not required if altering the policies, practices or procedures, including academic

requirements in postsecondary education, would fundamentally alter the nature of the goods and services.

When implementing reasonable accommodations it is important to—

- Develop a realistic time frame that promptly responds to the request.
- Keep lines of communication open.
- Use outside resources if necessary.
- Explain to the individual with the disability the reasonable accommodation and why it was chosen.

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 suggest alternative accommodations and the employer may choose the less expensive alternative or the one that is easier to provide. The employer is not required to give the employee the accommodation that the individual wants. Similarly, the employee is not required to accept the accommodation offered by the employer; however, as long as the accommodation offered by the employer is reasonable and effective, the employer has fulfilled his or her obligation to provide a reasonable accommodation. 29 C.F.R. § 1630.9(d).

It is not necessary to contact the EEOC about requested accommodations. However, if you have difficulty identifying an appropriate accommodation you may contact the EEOC or State and local vocational rehabilitation agencies and disability agencies for assistance.

Examples of reasonable accommodations for visual disabilities include—

- An external computer screen magnifier
- An accessible Web site
- Software that will read information on the computer screen
- Written materials in accessible format such as Braille or large print
- Use of guide dog in the workplace

[Click here](#) for more information on accommodating vision impairments under the ADA.

An employer should not disclose to other employees that an employee is receiving a reasonable accommodation. The ADA prohibits disclosure of medical information and telling employees that a co-worker is receiving a reasonable accommodation discloses that the co-worker has a disability.

Undue Hardship

Reference Number: CTAS-2022

Employers are not required to implement any reasonable accommodation that would present an undue hardship on the business. Undue hardship means that the accommodation would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature of operation of the business. Factors to be considered include the cost of the accommodation, the size and financial resources of the employer, and the nature and structure of the employer's business. An employer is not required to lower production standards or eliminate essential job functions to implement a reasonable accommodation. 42 U.S.C. § 12111(10).

If an employer is part of a larger organization, the structure and assets of the larger organization would be considered when determining if an accommodation is an undue hardship. Larger employers are usually expected to make accommodations that require greater effort and expense than would be required of a smaller employer.

Employers should look for outside funding when reasonable accommodations are costly. Vocational rehabilitation agencies may provide funds and the cost of providing accommodations can be offset by state and federal tax credits or deductions. Also, the individual with the disability should be given the opportunity to provide the accommodation or help pay for an accommodation that creates an undue hardship on an employer.

Employers are liable for contractual relationships. 29 C.F.R. § 1630.6.

Under Title III of the ADA, if your business is a place of public accommodation then you must provide accessibility to the general public. Title III also requires places of public accommodation and commercial facilities to provide accessibility during new construction or renovation.

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