

**Reasonable Accommodation and Sign
Language Interpretation:
Understanding the Rehabilitation Act
Requirements For Job Applicants and
Employees**

**Sharon Rennert
Senior Attorney Advisor
ADA/GINA Division
Equal Employment Opportunity Commission**



ADA/Rehabilitation Act

- Federal agencies: section 501 of the Rehabilitation Act
- Private sector/state and local governments: ADA
- 2 Laws the same in terms of prohibitions on discrimination
- Disability discrimination guidances on EEOC's website: All "ADA" documents apply to you!

Reasonable Accommodation

- Defined:
 - A reasonable accommodation is a change in the workplace, or in the ways things are usually done, that provides equal employment opportunities for individuals with disabilities
 - General rule: An employer provides a reasonable accommodation to a qualified individual with a disability if requested and if doing so does not pose an undue hardship

Examples of Reasonable Accommodations

- Almost unlimited possibilities
- Include:
 - Sign language interpreters
 - 42 U.S. Code 12111(9)(B): “provision of qualified readers or interpreters”
 - 29 C.F.R. Section 1630.2(o)(2)(iii): uses similar language as the statute
 - Modifications to existing equipment or purchase/lease of new equipment that is accessible to individual with a disability
 - Modifying employee’s work schedule

Examples of Reasonable Accommodations (cont.)

- Include:
 - Modifying workplace Policies
 - Telework (beyond whatever an agency generally provides to its employees)
 - Changes in the working environment (for example, flashing warning lights for evacuation or other emergency)
 - Reassignment (last resort)

Reasonable Accommodation

- Actions **not** required:
 - Removing an essential function (i.e., fundamental/critical job duty)
 - Lowering production standards (quantitative and qualitative)
 - Excusing misconduct/performance deficiencies
 - Providing personal use items, such as hearing aids, service animals

3 Areas Where Employer Must Provide Reasonable Accommodation

- Application Process
- Accommodations that enable an employee to perform her job or to gain access to the worksite
- Benefits and Privileges of Employment
 - Mandatory or voluntary training sessions, whether offered on-site or at an external location
 - Employer-sponsored parties: Even if off-site and outside business hours
 - Employer-sponsored programs/special events (for example, annual CFC kick-off assembly)

Key to Understanding/Complying with the Reasonable Accommodation Obligation

- Individualized Decision-making
- Get and use facts about applicant/employee and do not rely on assumptions or generalizations about the disability, the job, and the ability to perform the job
- Asking questions and listening to responses to understand the exact nature of the problem and why particular accommodations may/may not work to address the problem

Interactive Process !!!!!!!!

- Process almost always starts with a request from an applicant/employee
 - No “magic words” needed
 - Individual must tell employer that she needs something from the employer because of her medical condition
 - Need not be in writing
 - May come from someone other than the individual needing the accommodation (doctor’s note)
 - Employer may obtain information to determine if the individual’s medical condition constitutes a disability and/or to verify the need for accommodation
 - **Cooperative Process!**

Employees Entitled to Effective Accommodation

- Employer must provide an accommodation that meets the employee’s needs and removes a workplace barrier
- But, employee is NOT entitled to accommodation of her choice
- If 2 or more accommodations would be effective, employer may choose between them
 - This means you can make counter-offers!
 - Listen with open mind to any objections (individual may be right that your suggestion has problems).
 - If possible to provide the accommodation that was requested, that may be best in many situations.
- Critical that employer understand exact nature of problem to determine all possible, effective accommodations, then assess whether any/all possibilities constitute “undue hardship”

Undue Hardship

- **Significant** difficulty or expense
- Focus here is on resources and circumstances of agency as a whole, including impact on operations
- Undue hardship refers to denial of a specific accommodation
- Proving significant expense will be difficult so primary focus should be on whether reasonable accommodation requires change that is extensive, substantial, or disruptive

Trial Period

- Great option if you have concerns/doubts about providing a certain reasonable accommodation but no undue hardship and no definitive, objective reason to support outright denial of the accommodation
- Especially good tool where the accommodation is one requested by the employee (i.e., not your suggestion) and agency has concerns but does not have sufficient information to support an undue hardship decision

Process Not Over Simply Because You Provided the Accommodation

- Importance of monitoring to ensure the accommodation is solving the problem!
- Length of monitoring depends on various factors, but do not assume that the accommodation is working --- ASK!
- Not time-consuming but this is a critical final step in the reasonable accommodation process
- Only may not be the final step: on-going process in some cases

More Information

- Deafness and Hearing Impairments in the Workplace and the ADA,
www.eeoc.gov/eeoc/publications/qa_deafness.cfm
- Reasonable Accommodation & Undue Hardship under the ADA,
www.eeoc.gov/policy/docs/accommodation.html
- ADA (and Rehab. Act) Regulations,
www.eeoc.gov/laws/types/disability_regulations.cfm (Click on 29 C.F.R. Part 1630)
- ADA, www.eeoc.gov/laws/statutes/ada.cfm