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# ADA Compliance – How to Reasonably Accommodate and Sample Policy Review

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# Reasonable Accommodation



# Reasonable Accommodation

As the overall U.S. population shifts, so too do workforce demographics. Based on the different ways the population is changing, employers can expect that more future employees will have disabilities covered by the Americans with Disabilities Act (ADA).

# Reasonable Accommodation

One reason for this is that, as the National Center for Health Statistics reports, U.S. obesity rates have more than doubled since the 1970s—which means there has been an associated rise in weight-related health problems such as high blood pressure, high cholesterol and diabetes.

# Reasonable Accommodation

In addition, more older employees are in the workforce, and some of these seniors have disabilities.

# Reasonable Accommodation

Meanwhile, the U.S. Centers for Disease Control and Prevention has reported a significant rise in the number of children—the workforce of the not-so-distant future—with such developmental and behavioral conditions as attention deficit hyperactivity disorder, autism, and various mood and anxiety disorders.



# Reasonable Accommodation

Unfortunately, many employers are overwhelmed and underprepared when it comes to accommodating employees who have disabilities. What's more, employers often face a maze of regulations that can complicate the situation. For example, California employers must comply with several overlapping laws, including the ADA, which was broadened by the ADA Amendments Act of 2008, and the California Fair Employment and Housing Act, which must be followed in coordination with various laws on workers' compensation, pregnancy leave and family leave.



# Reasonable Accommodation

Here are five tips for how employers can engage more effectively with employees on disability accommodation issues and avoid disability-related lawsuits—or at least be better prepared to defend themselves against such suits.

# Reasonable Accommodation

## **1. Create a Written Policy**

Make sure your employee handbook includes a disability accommodation policy that clearly describes the interactive dialogue process and focuses on the need for communication between employees and HR professionals.



# Reasonable Accommodation

- Be separate from—and in addition to—the typical nondiscrimination and anti-harassment guidelines found in most handbooks.
- Spell out what the interactive dialogue process consists of, including information about documenting the existing disability if it isn't obvious and discussing options for reasonable accommodation.



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- Stress the necessity for open and ongoing two-way conversations about the employee's needs and how those requirements might affect how the worker performs the job's essential functions.

# Reasonable Accommodation

- Designate specific HR professionals who will handle accommodation requests. This approach helps to ensure that employees will connect with the people in the company who are most qualified in this area. Employers are often found legally liable if a worker can prove that his or her supervisor had knowledge of an accommodation request and failed to take proper action. A policy that names the specific individuals responsible for receiving such requests helps avoid this problem.



# Reasonable Accommodation

## **2. Train All Employees**

Supervisors are the eyes and ears of the company. In fact, the law deems that whatever they know or should know is what the company knows or should know as well. Thus, employers that fail to train their managers on how to handle accommodation requests are setting themselves up for lawsuits.



# Reasonable Accommodation

These requests come in many forms and are not always easy to recognize. Legally, they don't even have to be made in writing: Office chatter in which an employee mentions a disability in the context of his or her personal life could later be used to show that the employer had “constructive knowledge” of the disability.

# Reasonable Accommodation

Imagine, for example, an employee sharing with his boss that he struggles to make it to work in the morning due to physical therapy sessions he must attend. Believe it or not, that conversation would likely be deemed an accommodation request in the courtroom. An untrained supervisor not only may fail to initiate an appropriate interactive dialogue but also could subject the employee to disciplinary action that could later be deemed unlawful retaliation.



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Consider training non-supervisors on the accommodation policy as well. If every employee understands when accommodations should be sought, how requests should be made and who they should be made to, there is a greater likelihood that the company will handle these situations appropriately overall.

# Reasonable Accommodation

## **3. Make Individualized Assessments**

Once a supervisor or HR professional becomes aware of an employee's need for accommodation, he or she is legally required to engage in an interactive dialogue to determine any job-related limitations that might stem from the disability, as well as whether—and which—reasonable accommodations are in order.



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This is not a one-size-fits-all process; each request requires an individualized assessment that should include suggestions from the employee as well as the manager. Think of it as a brainstorming session. The company cannot simply rely on an approach that worked previously for an employee with a similar disability.



# Reasonable Accommodation

Keep an open mind and carefully evaluate each individual's request and medical condition. Consult with the company's lawyers to understand what can and cannot be asked of the employee during this assessment.

# Reasonable Accommodation

## **4. Keep Talking**

An employer's obligation does not end after a worker is given a reasonable accommodation. Continue to follow up with the employee and his or her supervisor to ensure that the accommodation is effective, and do not assume that the initial discussion and decisions will suffice. The job conditions and the health of the employee can change.



# Reasonable Accommodation

That's why the dialogue should continue when an employee is on ADA leave. He or she may need additional time off, for example, due to an unforeseen complication. Be sure employees know to inform designated HR professionals if the accommodation provided becomes insufficient.

# Reasonable Accommodation

## 5. Document Conversations

Every communication you have with the worker regarding the accommodation process should be documented and maintained in his or her confidential medical file (separate from the personnel file). Too often, managers fail to make note of the daily two-minute exchanges they have with a worker who has a disability. But it is those very conversations that constitute the ongoing interactive dialogue. No discussion about accommodation is too brief to be documented, given that the burden of proving an interactive dialogue took place will ultimately fall to the employer.





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# Sample Policy Review

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ABC Company values all of our employee's contributions including those who are experiencing disabilities. A reasonable accommodation's primary function is to enhance workplace productivity and provide equal employment opportunities to applicants, candidates, and employees with disabilities.

The goal of this policy and process is to create a more inclusive environment where all employees can readily and efficiently ask for and receive reasonable accommodations necessary to reach their full potential at work. This guidance also complies with our Federal obligations under the Americans with Disabilities Act, Section 503 of the Rehabilitation Act, and other applicable state and local disability related regulations.

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## **Purpose:**

The purpose of this document is to provide all employees with a detailed guide on the reasonable accommodation process. There are important steps that must be taken to ensure reasonable accommodations are documented (within the accommodation tracking system), communicated, and provided in a timely fashion. These steps insure equal opportunity for applicants, candidates, and employees with disabilities as well as insure ABC Company meets its legal obligations.

ABC Company is committed to processing requests for reasonable accommodation and will provide reasonable accommodations where appropriate, in a prompt and efficient manner in accordance with the time frames set forth in the following procedures.

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## **Who is covered by this guidance:**

Applicants, candidates, and employees with physical or mental conditions that substantially limit one or more major life activities or have a record of such a substantially limiting condition.

## **What is workplace reasonable accommodation:**

Workplace reasonable accommodation, sometimes called workplace adjustments, are any changes in the workplace or the way job duties are customarily performed that provides an equal employment opportunity to an individual with a disability. (This process does not cover requests that would pose an undue hardship or fundamentally change the essential functions of a job.)



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## **Not all accommodation requests can be honored:**

Sometimes an applicant or an employee may ask for an accommodation that is not reasonable or necessary, that poses an “undue hardship” (i.e. too costly or disruptive to business) on the company or its employees or that might threaten the safety of the individual who has made the request or of others. Even in those cases, the company will discuss whether some other form of workplace accommodation may be effective.



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## **When is reasonable accommodation provided:**

- when an applicant with a disability needs an accommodation to have an equal opportunity to compete for a job;
- when an employee with a disability needs an accommodation to perform the essential functions of the job or to gain access to the workplace; and
- when an employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g. productivity tools, trainings, company sponsored events).



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## **What are the common types of accommodations:**

- Acquisition or modification of equipment
- Changes in the physical layout of a work environment to eliminate or reduce barriers
- Elimination of non-essential job duties
- Modifications of an individual's work schedule while continuing to meet business requirements
- Modifications to the building where an individual performs work

Note: Leave time and/or reassignment to another vacant position are accommodations of last resort.

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## Responsibilities:

- The applicant, candidate, or employee has the responsibility to request an accommodation.
- Managers are responsible to receive, begin documentation for, and communicate all accommodation requests to the Accommodation Consultant. (DD Note: Could be outside HR like at TD and GM.)
- The Accommodation Consultant and/or manager is responsible for initiating the interactive process with the person who requests an accommodation, to involve only those who are necessarily involved to insure an effective and timely accommodation is provided. They also must inform the employee or applicant of the outcome of their request.

Note: Accommodations that are easily provided (e.g. flexible schedule) or under a \$150 threshold may be provided without consulting with the Accommodation Consultant. Documentation of accommodation implemented by hiring manager or manager is required.

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## **What is the interactive process (IP):**

The interactive process is a collaborative effort between the employee and company representative to discuss the need for an accommodation as well as identify effective accommodation solutions. The interactive process begins when an employee discloses a disability/health condition and requests an accommodation, a manager or Human Resources representative recognizes an obvious challenge of an applicant, candidate, or employee due to a disability, or when an employee returns to work with an on-going health care condition or disability. A robust interactive process demonstrates good faith and promotes a disability inclusive workplace.

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## **Confidentiality in the reasonable accommodation process:**

Ensuring the confidentiality of all medical information obtained in connection with a request for reasonable accommodation, as well as the confidentiality of all associated communications during the interactive process is required by federal law.

All documentation must be kept in a file separate from an individual's personnel file. Non-medical information obtained during this process is shared on an as needed basis with those involved in providing a reasonable accommodation.



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## **ABC Company Procedure for Reasonable Accommodations**

Most accommodation requests are initiated by the applicant, candidate, or employee. That said, it is important to recognize that company representatives should not assume that because an individual has a physical or mental disability that he or she will necessarily require or want an accommodation. An individual may have a disability that does not limit the employee's ability to perform the essential functions of their job or require a workplace modification. Because each individual's abilities and needs are different, each accommodation request will be handled on a case-by-case basis.



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In *rare* instances, when a disability and associated need for an accommodation is obvious (e.g. an applicant is blind and cannot access an applicant tracking system, an employee who uses a wheelchair cannot access a restroom) a hiring manager or manager may initiate the reasonable accommodation process and begin the interactive discussion with the person with a disability.

At times, ABC Company may be able to address an employee's disability or chronic health condition related needs outside the reasonable accommodation process. Example, ABC Company has an ergonomic program available to all employees who may require special equipment to address or prevent various injuries and conditions. Under the ergonomic program, an employee with carpal tunnel syndrome may request an ergonomic chair, stand/sit desk, or wrist pad. Requests under these procedures, as well as requests under the ergonomic program, should be directed to the Accommodation Consultant.



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## **Requesting a Reasonable Accommodation (RA):**

The process begins when the company becomes aware that an employee may need an adjustment or change concerning some aspect of the application process, the job, or a benefit of employment for a reason related to a disability or chronic medical condition. Notification may include documentation from the employee directly and/or from the employee's physician. An **applicant or employee** may request a reasonable accommodation at any time, **orally or in writing**. A request for an accommodation can also be made by an employee representative (e.g. family member). If the request comes in through a third party, the request should be confirmed with the applicant or employee.



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In most situations, employees or employee representatives should notify the employee's manager directly if they believe they need an accommodation or other workplace adjustment because of a health condition. For complex accommodations or those costing over \$150, the manager should communicate the request immediately to the Accommodation Consultant within two business days.

If an employee makes a reasonable accommodation request to someone other than the manager or Accommodation Consultant, such as a Human Resources representative, facilities personnel, or information technology staff, these company representatives should also communicate the request to the AC within two business days.

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An accommodations request does not have to include any special words, such as “reasonable accommodation,” “disability,” or “ADA.” A request is any communication in which an individual asks or states that the applicant or employee needs a change because of a medical condition. A manager, recruiter or the AC needs to ask an individual whether they are requesting a reasonable accommodation if the nature of the initial communication is unclear.

**Important Note:** It is best for employees to ask for accommodations *before* any work related issues or concerns arise: While an employee does not have to disclose his/her disability until he/she feels they need an accommodation, it is highly recommended that employees not wait until their performance appraisal meeting or during a disciplinary proceeding as the ABC Company does not have to rescind disciplinary actions administered prior to a request for an accommodation.

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Once the company receives notice of a need for accommodation, it will provide the employee with the Accommodation Request form which the employee (and/or the employee's physician) must complete and return as indicated.

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If the disability or need for accommodation is obvious or adequate medical documentation has already been provided for other reasons (i.e. Family Medical Leave Act, Workers Compensation), no medical documentation will be required. However, a request form still needs to be filled out by the applicant or employee. Whenever the disability or need for accommodation is not obvious, the employee will be asked to sign a release form authorizing the company to secure additional medical information from the employee's health care provider to provide job relevant information as to the nature of the employee's medical condition, and/or whether the requested modification/accommodation is necessary.



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Note that the health care provider should be provided with information as to the essential duties of the individual's job when asked in order to have an informed opinion as to any accommodations that will both meet the job requirements and help to maintain positive health.



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The AC may also give the individual a list of questions to give to the health care provider or other appropriate professional to answer. If sufficient medical information is not provided by the individual after several attempts, the AC may ask the individual requesting accommodation to sign a limited release form permitting the AC to contact the provider for additional information. The AC may also elect to have the medical information reviewed by a doctor of the organization's choosing, at company expense.

Employees are obligated to cooperate with this process. A failure to do so could result in delayed consideration of a request or in its denial.

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## **Initiation of the Interactive Process (IP):**

After a request for accommodation has been made, and if need be, confirmed by a health care provider, the next step is to begin the interactive process to determine what, if any, accommodation should be provided. For complex accommodations or those costing over \$150, the AC will contact the applicant or employee as soon as feasible but no longer than 10 days after establishing the need for the accommodation. It is expected that in the case of accommodations for applicants or candidates the process would be an especially high priority and begin immediately upon request and receipt by the AC so that the individual does not lose out on the opportunity to compete for the job.

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During the interactive process, the individual requesting the accommodation and the manager, with or without support from the Accommodation Consultant, will need to clearly discuss key aspects with each other, including:

- the nature of the job related challenge that is generating the request
- confirming that a disability is prompting the need for an accommodation
- the accommodation solution(s) that may be effective in meeting an individual's needs to successfully meet the requirements of the job



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All accommodation requests are handled on a case-by-case basis. A robust IP frequently requires input from the department manager, an HR Business Partner, Leave Management, the employee and/or the employee's physician. Other departments, a third party vendor, as well as outside disability-related organizations, may be consulted depending on the type of request sought. It is suggested that company personnel use the Job Accommodation Network (JAN) at [AskJAN.org](http://AskJAN.org) to discuss workplace accommodations or disability related legislation.

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## Time Frame for Processing Requests and Providing Reasonable Accommodations

ABC Company **will process requests and, where appropriate, provide accommodations in as short a period as reasonably possible.** The time frame for processing a request (including providing accommodation, if approved) is as soon as possible but no later than **30 business days from the date the request is made.** This 30-day period includes the 10-day time frame in which the AC must contact the requestor after the request for RA is made.

Note: the time frame begins when an oral or written request for reasonable accommodation is made, and not necessarily when it is received by the AC. **Therefore, everyone involved in processing a request should respond as quickly as possible.** This includes referring a request to the AC, contacting a health care provider if medical information or documentation is needed, and receiving technical assistance from outside parties such as JAN.



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If the AC must request medical information or documentation from a requestor's health care provider, the time frame will stop on the day that the AC makes a request to the individual to obtain medical information or sends out a request for information/documentation, and will resume on the day that the information/documentation is received by the AC. It is therefore recommended that the requestor work closely with their health care provider to expedite their response to the company's inquiry.

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## Expedited Processing of a Request

In certain circumstances, a request for reasonable accommodation requires an expedited review and decision. This includes where a reasonable accommodation is needed:

- to enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation to ensure that an applicant with a disability has an equal opportunity to apply for a job.
- to enable an employee to attend a meeting scheduled to occur soon. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in five days.
- to address a safety related concern in the workplace.



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## **Extension of the Timeframe for Providing an Accommodation:**

An extension of the time frame for providing an accommodation will be considered in extraordinary circumstances that could not reasonably have been anticipated or avoided in advance of the request for accommodation, or that are beyond ABC Company's ability to control. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. In such circumstances the requestor, manager and other need-to-know individuals will be informed as to the reason for the delay and anticipated delivery of solution.



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## **Determination:**

Once the Accommodation Consultant receives all of the medical and other information deemed necessary, they will determine in consultation with others on a need-to-know basis whether the workplace modification / accommodation sought will be granted, or, whether an alternative modification / accommodation is appropriate. The AC will first inform the employee's manager or, as appropriate and customary, the office manager. The AC and/or manager will then communicate the decision to the employee and discuss the employee's questions/concerns, if any, about that decision and steps for implementation.

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When ABC Company **grants an accommodation**, the manager or AC will give the “Approval of Request” form to the requestor, and discuss implementation of the accommodation. A decision to provide an accommodation other than the one specifically requested will be considered a decision to grant an accommodation. If the manager or AC offers an accommodation other than the one requested, but the alternative accommodation is not accepted by the employee, the manager or AC will record the individual’s rejection of the alternative accommodation on the “Approval” form.

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Medical information will be disclosed ONLY on an “as need to know” basis. Accommodations may be provided without informing the employee’s manager or supervisor without disclosing the employee’s diagnosis or disability.

Note: An individual’s receipt or denial of an accommodation does not preclude the individual from making another request at a later time if circumstances change and they believe that an accommodation is needed due to workplace needs associated with evolving limitations from a disability (e.g., the disability worsens or an employee is assigned new duties that require an additional or different reasonable accommodation). It is important to note that company representatives cannot refuse to process a request for reasonable accommodation, and a reasonable accommodation may not be denied, based on a belief that the accommodation should have been requested earlier (e.g., during the application process).



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## **Temporary or Trial Accommodations:**

Many accommodations are implemented long-term, while some accommodations last for only a temporary period. Every situation is unique and requires case-by-case analysis of the individual's limitations, restrictions, specific accommodation needs, and the impact accommodation will have on job performance and business operations.

Implementing a temporary change offers the opportunity to evaluate an accommodation for effectiveness before making the decision to implement the change long-term and also demonstrates good faith.



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Situations that can warrant provision of a temporary or trial accommodation may include, *but are not limited to*:

- when time is needed to research a permanent accommodation solution, to acquire equipment, arrange a service, or identify an alternative vacancy;
- when it is necessary to test an accommodation to determine if it is effective;
- when the medical impairment is temporary but sufficiently severe enough to entitle the employee to accommodation;
- when it is necessary to avoid temporary adverse conditions in the work environment; or
- when an accommodation can currently be provided, but may eventually pose an undue hardship if provided long-term.



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## **Monitoring an Accommodation:**

It is the obligation of the manager to monitor the effectiveness of the accommodation. This monitoring should occur outside of the ABC Company Performance Appraisal process. While employees with disabilities must be able to perform essential functions of their job with or without accommodation, it is also the responsibility of the manager to insure an accommodation is effective for the employee. If an accommodation is no longer effective, then the interactive process should be revisited.

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## **Accommodation Request Denial:**

If ABC Company **denies a request for accommodation**, the manager or AC will give the “Denial” form to the requestor and discuss the reason for the denial. The form will explain both the reasons for the denial of the individual’s specific requested accommodation and the process or appealing this decision.

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## **Appeals Process:**

An individual dissatisfied with the resolution of a reasonable accommodation request can ask the Director of the Office of Human Resources or other individual designated for RA appeals by the company to reconsider that decision. An individual must request reconsideration within **10 business days** of receiving the “Denial” form.

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## **Forms can be requested from Synergy HR:**

- Accommodation Request Form
- Medical Inquiry Request Form
- Accommodation Approval Form
- Temporary or Trial Accommodation Approval Form
- Monitoring Form
- Denial Form
- Appeals Form



# Questions?

# Synergy Contact Information

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