TRIAGE HEALTH



Employment

Quick Guide to Reasonable Accommodations at Work

The Americans with Disabilities Act (ADA) is a federal law that provides eligible individuals with disabilities protection against discrimination. Title I of the ADA provides protections in the workplace for individuals with disabilities. The ADA also provides some employees with the additional benefit of access to reasonable accommodations.

Employers covered by Title I of the ADA:

- Private employers, with 15 or more employees
- Employment agencies, labor organizations, and joint labor-management committees
- State and local governments of any size
- Employees of the federal legislative branch (e.g., Employees of the Senate, House of Representatives, and agencies that support Congress)
    - Note: Employees of the federal executive branch (e.g., U.S. Post Office, agencies, etc.) are covered by Rehabilitation Act of 1973 (similar to ADA)
- Religious organizations

Employees eligible for protection under the ADA

- Are "qualified" (i.e., you can perform the essential functions of the job, with or without reasonable accommodations), and
- Have a disability within the ADA's definition

What is a "disability" under the ADA?

"A physical or mental impairment that substantially limits one or more major life activities." Note: When deciding if you have a disability under the ADA, keep in mind that sometimes it is not the brain tumor itself that substantially limits a major life activity, but rather the side effects of treatment (e.g., nausea, cognitive difficulties, fatigue, neuropathy, depression, etc.) that limit one or more major life activities.

More information about how to determine if you have a disability under the ADA: askjan.org/corner/vol05iss04.htm

What is a "major life activity" under the ADA?

"Activities that an average person can perform with little or no difficulty." Major life activities include:

- breathing
- walking
- seeing
- speaking
- hearing
- concentrating
- sleeping
- learning
- working
- caring for oneself
- operation of major bodily functions

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When does the ADA protect me?

- I currently have a disability. For example, you are currently going through treatment and are suffering from extreme nausea that makes getting through a work day without vomiting impossible.
- I have a history of having a disability. For example, you are a brain tumor survivor with no current limitations, but a potential employer is refusing to hire you because she is afraid you will have a recurrence.
- I am being regarded as having a disability. For example, you are going through treatment but are not experiencing any substantially limiting side effects, but your employer is treating you differently at work because he perceives you to have a disability.
- I "associate" with a person with a disability. For example, you are the primary caregiver to your mother who is battling a brain tumor and your employer is refusing to promote you because of your caregiver role.

What are you entitled to under the ADA?

- Protection from discrimination at work in all four of the circumstances listed above
- Reasonable Accommodations, only if
    - you currently have a disability, or
    - you have a history of a disability

The ADA provides protections during all phases of employment (including during the job application process) and when all employment-related decisions are being made, including hiring, firing, pay and benefits, promotions, job assignments, bonuses, training opportunities, and leaves of absence.

What are "reasonable accommodations?"

"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"

Reasonable accommodations can be changes in work space, work schedules, or policies, that help you continue to do your job or return to work. Remember that when thinking about possible accommodations that might work for you, that they have to still be "reasonable." And, one accommodation might not address all of the challenges you are facing, so you can request more than one accommodation.

Does an employer have to provide you with a reasonable accommodation?

Yes, if you are eligible under the ADA or a state fair employment law. However, an employer does not have to accommodate you, if the employer can show that the accommodation you are requesting would be an undue hardship or would post a direct threat. An undue hardship is when providing the reasonable accommodation would cause the employer significant difficulty or expense. A direct threat is when there is a "significant risk of substantial harm to health or safety of self or others that cannot be eliminated or reduced by reasonable accommodation."

What medical information do I have to share with my employer to be protected by the ADA?

Your employer is entitled to a medical certification from a health care provider to show why you need a reasonable accommodation. However, your employer doesn't necessarily need to know about your brain tumor if you don't want to share that information. If you are concerned about disclosing your brain tumor diagnosis with your employer, there are options for protecting your privacy. Your employer only needs as much information as necessary to show that you are eligible for a reasonable accommodation. For example, if you are experiencing neuropathy as a side effect, the health care provider could focus on discussing the neuropathy on the medical certification form, and not include information about your brain tumor diagnosis.

What reasonable accommodations might be useful to someone?

Reasonable accommodations can be grouped into these categories:

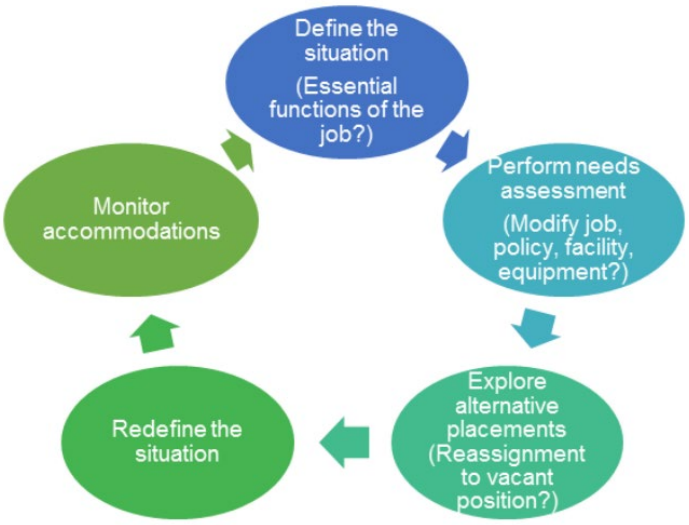
- Changes in work schedule (e.g., flex time, telecommuting)
- Changes in workspace (e.g., ergonomic chair, hand controls on cars, moving offices)
- Using technology (e.g., tablet, smart phone, screen reading software, speak-type software)
- Changes in workplace policies (e.g., allowing an employee with a scar to wear a scarf or hat, more breaks)
- Shifting non-essential job duties to other employees
- Moving to a vacant position, if one is available (Note: employers are not required to create a new position for an employee with a disability, but it may be something you can still request)

The reasonable accommodation that will work best for you will depend on the challenges you are dealing with, your job responsibilities, and your workplace. For help determining which accommodations might be useful, the Job Accommodation Network (JAN), askjan.org, has a Searchable Online Accommodation Resource (SOAR) system. JAN also offers experienced consultants who can discuss specific accommodation needs with you, confidentially.

How should you ask for a reasonable accommodation?

The ADA does not require that you ask for a reasonable accommodation from a specific person, such as a supervisor, another superior, or a human resources (HR) representative.

However, it is a good idea to check your employers' policies, typically found in an employee handbook, to see if your employer has a specific process for requesting reasonable accommodations. If your employer doesn't have a process, you can decide if you want to start by asking your supervisor or if you want to talk with an HR representative.



When you make your request, you do not have to specifically mention the ADA or use the words "reasonable accommodation." Your request does not need to be in writing, but you may decide that you want the record of your request. If you decide not make your request in writing, you can follow up any conversations with an informal email or a more formal letter or contract confirming what was agreed upon. Remember your current supervisor may not always be your supervisor.
Once you make a request, you and your employer are supposed to engage in the "interactive process." The Equal Employment Opportunity Commission (EEOC) describes the interactive process as the way to negotiate and come to an agreement on an effective reasonable accommodation.

Your need for an accommodation may change over time. For example, you may need a flexible work schedule while you are going through treatment, but once you are done with treatment the accommodation that would be more helpful are additional rest periods during the day. Part of the interactive process requires that you and your employer monitor accommodations to ensure that they are still effective, and if not, start the process over to identify a new effective accommodation.

When should you ask for a reasonable accommodation?

Generally, you should ask for a reasonable accommodation when you realize that you need one to effectively complete your job responsibilities. If you delay the request and your job performance suffers, your employer may make a decision

to let you go based on your poor job performance. But you may be able to avoid this situation, if you ask for a reasonable accommodation to help you effectively complete your job responsibilities.

Is your request for reasonable accommodations confidential?

Generally speaking, your employer cannot share information about your medical condition or that you have asked for, or received, a reasonable accommodation. But keep in mind that if you ask your supervisor for an accommodation, your supervisor may take your request to HR. And, in turn, HR might share information with company leaders as appropriate. If you start with HR, because you do not want your supervisor to know about your medical condition, then HR can only share with your supervisor that you are getting an accommodation, not why. Co-workers may ask why you are receiving an accommodation, but your employer can only confirm that you are getting an accommodation, not share information about your medical condition.

Are caregivers eligible for reasonable accommodations?

No, employers are not legally required to provide employees who are acting as caregivers with reasonable accommodations. However, many employers recognize the benefit to keeping a valued employee and avoiding the costs associated with finding a replacement. Therefore, many of the strategies discussed above can be useful options for caregivers as well.

State Fair Employment Laws

All states have some version of a state fair employment law. Many provide similar protections as the ADA does; however, some have a broader definition of disability and some cover private employers with fewer than 15 employees. For more information about your state's law, visit TriageHealth.org/StateLaws.

Where can I get more information?

- Job Accommodation Network Guide: askjan.org/publications/individuals/employee-guide.cfm
- Checklist: Reasonable Accommodations: TriageHealth.org/Checklist-ReasonableAccommodations
- Animated video on Managing Side Effects at Work: TriageHealth.org/Video-SideEffectsatWork
- For information about the ADA: Equal Employment Opportunity Commission (EEOC): eeoc.gov
- For information on disclosure decisions in the workplace: Quick Guide to Disclosure, Privacy, & Medical Certification Forms: TriageHealth.org/QuickGuide-Disclosure
- All Triage Health Employment Materials: TriagehHealth.org/Employment

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