

Understanding the “Reasonable”
in Reasonable Accommodation
Session 1

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Agenda

- Introduction
- Reasonable Accommodations related to Benefits & Privileges of Employment
- Reasonable Accommodations related to Job Performance

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What are Accommodations?

Reasonable accommodations mean the removal of workplace barriers to allow an individual with a disability to perform the essential functions of a job. Categories of accommodations include:

- Changes to the job application process
- Modifications to the work environment
- Changes that allow an individual with a disability to enjoy equal benefits and privileges of employment



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What Is "Reasonable"?

Choices

Accommodations must be *reasonable*:

- Effective – enables employee to perform the job
- Removes a *workplace* barrier (not a personal one)
- Seems reasonable on its face
- Need not violate seniority provisions of a CBA
- Need not be the employee's *choice* of accommodation:
 - Employer may select *any* effective accommodation
 - Give consideration to employee's preferred accommodation

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What Is Not "Reasonable"?

Accommodation does not require employers to:


- Create a position for the disabled employee
- Hire another employee to perform the job functions
- Waive the requirement that the employee perform all essential functions of the job
- Lower production standards
- Provide personal use items
- Promote the employee
- Bump another employee out of a position
- Provide personal use amenities (refrigerator)

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Benefits & Privileges of Employment

Provide reasonable accommodations so that disabled employees can enjoy the benefits and privileges of employment equal to those enjoyed by non-disabled employees

- Training
- Services
- Parties or other social functions



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Benefits & Privileges of Employment

Access to training

- In-house training
- Training provided by an outside entity.
- Voluntary vs. mandatory

Examples

- Sign language interpreters
- Written materials in alternative formats such as braille, large print, or audio/video recordings

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Benefits & Privileges of Employment

Access to employer communications

- Equal access to information communicated in the workplace to non-disabled employees.
- Obligation exists regardless of whether information is needed to perform the job.
- EEOC example: Adaptive equipment for a blind employee's computer to have equal access to the company's intranet and email.

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Accommodations Related to Job Performance

Examples

- Making facilities readily accessible to individuals with disabilities
- Appropriate adjustment or modifications of facilities and equipment
- Job restructuring
- Part-time or modified work schedules
- Work from home arrangements
- Modified workplace policies
- Leaves of absences
- Transfer or reassignment

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Reasonable Accommodations Related to Job Performance



- **Access to facilities**
 - Making existing facilities readily available to disabled employees
 - All services and programs provided in connection with employment
 - All non-work facilities maintained by employer for employee use

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Reasonable Accommodations Related to Job Performance



- **Improving facilities or equipment**
 - Modifying/adjusting the work environment
 - Modifying/adjusting manner in which the position is customarily performed
 - *Skerski v. Time Warner Cable* (3rd Cir. 2001) 257 F.3d 273

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Reasonable Accommodations Related to Job Performance

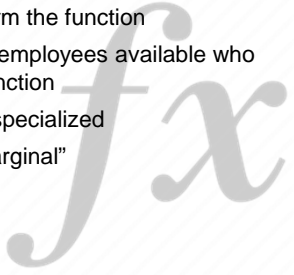


- **Job restructuring**
 - Changing work schedules
 - Reallocating or redistributing nonessential functions
 - Altering when/how essential or nonessential functions are performed
 - No obligation to create a new position
 - Full-time to part-time

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What are Essential Functions?


- Job exists to perform the function
- Limited number of employees available who can perform the function
- Function is highly specialized
- Function is not “marginal”



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What are Essential Functions?


Question: *Is regular attendance an essential function?*



- EEOC: Although performing a job “sometimes requires a person’s presence at the worksite,” this does not render attendance “a job function in and of itself.”
- Most courts conclude attendance is essential for most jobs

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What are Essential Functions?



- **Question:** *Is punctuality an essential function?*

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Reasonable Accommodations Related to Job Performance



- **Modified or part-time schedules**
 - Adjusting arrival/departure times
 - Providing periodic breaks
 - Altering when certain functions are performed
 - Providing reduced hours worked or part-time work

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Reasonable Accommodations Related to Job Performance



- **Work from home arrangements**
 - May be a reasonable accommodation when physical attendance at the worksite is not an essential function
 - May be a reasonable accommodation when essential functions can be performed remotely

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Reasonable Accommodations Related to Job Performance



- **Modified workplace policies**
 - Leave and attendance policies
 - Policies prohibiting eating or drinking at workstations
 - Dress and grooming policies
 - Standards of conduct

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Reasonable Accommodations Related to Job Performance



- **Change in supervisor**
 - Generally not considered a “reasonable” accommodation
 - EEOC: Modification to supervisory methods may be a reasonable accommodation

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Reasonable Accommodations Related to Job Performance



- **Leaves of absence**
 - How much leave is considered reasonable
 - Providing leave for unreliable and unpredictable attendance is not required
 - Does the employer have to hold the employee’s job open during the leave
 - Fixed return date
 - Indefinite leaves

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Reasonable Accommodations Related to Job Performance



- **Transfer or reassignment**
 - Accommodation of last resort
 - Consider available positions and those which will become available within a reasonable time period
 - Employer obligated to inform employee of vacant positions
 - Qualified for the vacant position
 - Equivalent position
 - Bona-fide seniority systems

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When is the Obligation to Provide Reasonable Accommodation Complete?

- The duty to accommodate is *ongoing*.
- Follow up with the employee to ensure the accommodations are effective.
- Follow up with the supervisor to identify concerns.
- Hold additional interactive process meetings, if necessary.
- **Document! Document! Document!**
- Enforce rules and policies equally.



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Thank You

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