



Demystifying Disability

Simple Strategies for Providing Accommodations for Employees with Disabilities

By: Amber Cheek, J.D.,

Disability Inclusion and ADA Compliance Manager,

University of Missouri

Taking a Common Sense Approach to the ADA

- Goals of this presentation:
 - Discuss the interactive process
 - Discuss the underlying communication factors involved
 - Explain best practices for being more inclusive of persons with disabilities



About the Speaker

- Amber Cheek, J.D.
 - Disability Inclusion and ADA Compliance Manager, University of Missouri
 - Former Presidential Management Fellow at the Office of Disability Employment Policy, U.S. Department of Labor
 - Experience working for the Equal Employment Opportunity Commission
 - Former Director of the Workforce Recruitment Program, an employment program for persons with disabilities



Disclaimer

- This presentation is for educational purposes only, and the views and opinions provided in this presentation are solely those of the presenter.
- The information in this presentation should not be construed as legal advice, and is informational only.



CLIFF'S NOTES VERSION OF TITLE I OF THE ADA



What is a Disability under the ADA?

- **Disability under the ADA means:**
 1. A physical or mental impairment that substantially limits one or more major life activities; OR
 2. A record or history of an impairment (e.g. a cancer survivor); OR
 3. Being regarded as having an impairment (e.g. a person with a limp who walks well)
- **Does not include:** temporary disabilities (i.e. less than 4-6 months), ordinary traits (e.g. absentmindedness), obesity, drug use, sex disorders, kleptomania, etc.



The Definition Should Always Be Interpreted Broadly

- The ADA Amendments Act of 2008 expanded the definition of disability, and thus the number of people covered by the ADA has increased dramatically.



Most Disabilities are Invisible

By varying estimates, 12.1% - 25% of the U.S. population has some sort of disability – most are invisible.

- **Visible/Readily Apparent Disabilities:**

- Hearing disabilities (Hard of Hearing or Deaf): 7.6 million
- Vision disabilities (Low Vision or Blindness): 8.1 million
- Mobility impairments (Defined as difficulty walking ¼ mile): 30.6 million (3.6 million wheelchair users)

- **Invisible Disabilities:**

- Learning Disabilities (ADD, Dyslexia, etc): 10.6 million
- Intellectual Disabilities: 1.2 million
- Psychiatric Disability (Depression, Anxiety Disorders, PTSD, ADHD, etc): 88.6 million (estimated)



Employees must always be “Qualified”

- **Title I of the ADA only protects “qualified persons with disabilities.”** *Qualified* means that an employee satisfies the required skill, experience, education, and other job requirements, AND can perform the essential functions of the job, either with a reasonable accommodation or without one.



The Interactive Process in Five Easy Steps

- **Step 1:** *Recognize a request for reasonable accommodation.*
- **Step 2:** *If the disability is not obvious, ask for documentation.*
- **Step 3:** *Determine the essential functions of the job (don't rely on the job description).*
- **Step 4:** *Engage in the Interactive Process.* Schedule a “sit down” in which the supervisor, the employee, and HR together brainstorm possible solutions that would allow the employee to perform the job. Be sure that the employee is a partner in the process.
- **Step 5:** *Once several accommodations are on the table, choose the one that is most reasonable.* Then document the process and implement the accommodation as soon as possible.



Step 1: Recognizing Requests for Reasonable Accommodation

- There are no magic words, and requests are most often verbal and informal, leading many supervisors to overlook them.
- Remember: the definition of what is a disability is extremely broad.



Are these Requests for Reasonable Accommodation?

- An employee's spouse phones the employee's supervisor to inform her that the employee had a medical emergency due to multiple sclerosis, and needed to be hospitalized.
- An employee tells his supervisor, "I have low blood sugar, and these long shifts are really hard."
- An employee says "The bright lights above my cubicle give me migraines."
- An employee has been out of work with a back injury. The employee's doctor sends the employer a letter, stating that the employee is released to return to work, but with certain work restrictions.
- An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of my depression."
- An employee tells her supervisor, "In next week's training, I will not be able to view the trainer's PowerPoint slides because of my low vision."



Step 2: Requesting Documentation

- Only request documentation if the disability is not obvious
- You only need enough documentation to “confirm the existence of the disability.” This can be a simple note from a doctor.
- Avoid requiring an “excessive” amount of documentation



Step 3: Determining Essential Functions

- **Tests to determine what is essential:**
 - Would eliminating that duty fundamentally change the job?
 - What tasks must be accomplished to justify the existence of this job?
 - Does it require special expertise that only a limited number of employees have?
 - Is it something an employee spends a significant amount of time doing each week?
 - Be specific to this job, in this location, and not a general class of jobs



Marginal Functions

- **Tests to determine if a function is marginal:**
 - Does the employee spend only a small percentage of his or her time per week performing this task? Is this a task that the employee must perform only rarely?
 - Is this a task that requires very little specialized skill, and could be easily reassigned?
 - Is this a task that is an “add on” (i.e. not directly related to the reason this position exists)?
 - Are there many other employees who could take over performing this function without causing an undue burden?
- **NOTE:** “Trading” marginal functions is one of the easiest and most effective reasonable accommodations, particularly in “hard to solve” situations.



Step 4: The Interactive Process

The Best Way: Arrange a “sit-down” between an HR professional, the employee, and the employee’s supervisor to discuss various solutions. Seek suggestions from both the supervisor and the employee.

- Remember: employees with disabilities are often apprehensive about whether their disability will be “held against them” or not, so it is important to frame this as a “brainstorming discussion.”
- Failing to communicate well and ask for input from the employee during the interactive process is probably the #1 reason why employees file EEOC/MCHR complaints based on the ADA.



Choosing an Accommodation

- An accommodation is a modification to the work space or exception to a policy that ensures a person with a disability can perform a task.
- ASK: 1) What specific issue is preventing the employee from being able to perform this task? 2) What modifications would eliminate or mitigate that issue?
 - List all of the possible accommodations you, the supervisor, and the employee can come up with. For extra input, visit the Job Accommodation Network website – www.askjan.org or call their free hotline.



The Power of Curiosity

- Instead of trying to create a formula (X Disability = X Accommodation), adopt an attitude of curiosity in your conversations with employees. Ask continuously “What is the barrier here? What’s getting in the way of you being able to do this well?” “Why?” “What could lessen the effect of that?”



Step 5: Choosing the Accommodation that is “Reasonable”

- A reasonable accommodation won't pose an “undue hardship” considering the nature of the job and the workplace.
 - Ask: 1) Would it change the nature of the job? 2) would the cost/difficulty of implementing be prohibitive?
- The accommodation need not be the best or most expensive one available – it need only be effective (allowing the employee to perform the essential functions of the position).



One Person, One Accommodation, and One Job At A Time

- Remember: Reasonability is fact-specific to this SPECIFIC PERSON (not others with similar disabilities) in this SPECIFIC JOB (based on this person's day to day work, not a general job description).
- Evaluate the reasonability of each accommodation one at a time, then choose the one that is most reasonable while still allowing the employee to do the job.



Rejecting an Accommodation

- If you determine that a requested accommodation would be unreasonable, you must always follow up with the question: “But...what other accommodation *would* be reasonable?”
- *Undue hardship is a very high bar to meet* – so be careful to avoid assuming that no reasonable accommodation is possible.
- If you reject an accommodation, you should always take time to explain to the employee in detail why you did so.



The Importance of Flexibility

- The most successful technique I've used: the “trial accommodation.”
- When discussing with both employees and supervisors, propose trying this accommodation for a certain period of time and revisiting with a follow up meeting on a specific date.



Setting Clear Conduct Standards Is an Essential Part of the Process

- Ensure that both the employee and the supervisor understand that conduct standards are the same for everyone, regardless of disability, and set expectations early in the process.



BIG PICTURE BEST PRACTICES FOR MANAGING DISABILITY AND REASONABLE ACCOMMODATION ISSUES



Discuss Disability with Every Employee, Not Just Those You Know Have Disabilities

- Trust is the essential factor in determining whether an employee is going to tell you about a problem they are having.
- Gain trust from the start by encouraging your supervisors to tell every new employee/including in your onboarding materials: *“We are a disability friendly workplace. If you ever find that a disability or medical problem is affecting your work, please come to us and we’ll try our best to find an accommodation that works for everyone.”*



Ensure that all Supervisory Employees Receive Training on Reasonable Accommodations

- All Supervisors should have enough ADA training to:
 - 1) recognize an accommodation request
 - 2) conduct that initial conversation with the employee in the right way, and
 - 3) work well with HR to determine accommodations.



Top Reasons Employees Choose Not to Disclose Disabilities to Their Employers

Rank	Factor	Percentage of Persons with Disabilities (out of a sample size of 711 persons) citing this as a “very important factor.”
1	Risk of Being Fired or Not Hired	73.0%
2	Employer may Focus on the Disability rather than employee’s Abilities and Talents	62.0%
3	Fear of Losing Health Care	61.5%
4	Fear of Limited opportunities (for future promotion, important assignments, etc.)	61.1%
5	Fear that the employee’s supervisor will not be supportive	60.1%
6	Risk of being treated differently	57.8%
7	Risk of being viewed differently	53.8%
8	Employee’s belief that their disability has no impact on their work, and so shouldn’t be disclosed	44.0%
9	Desire to keep the disability private	27.9%

* Von Schrader, Sarah (2011). “Emerging Employment Issues for People with Disabilities.” Cornell Employment and Disability Institute.



Have a Clear Accommodation Request Process

- Use a Reasonable Accommodations Request form, and provide clear information to all employees about how they can initiate the reasonable accommodations process and what the process entails.



Include Disability in your Diversity Initiatives

- Include disability in your “diversity statement” and recruiting materials. Doing so is a strong signal to persons with disabilities that they can trust you and your process.



Encourage your Organization's Leaders to View Reasonable Accommodations as a Retention Strategy

- JAN studies show that 57% of all accommodations cost nothing, and that the average cost of the other 43% is only \$500 per employee – much less than the cost of replacing an already-trained employee.
- The Disability Domino Effect: Improving your reasonable accommodations process not only benefits those with obvious disabilities, but also employees with any kind of medical issue, pregnant employees, and employees who are aging.



These Are Human Issues

- “There are no “normal” people; just people who haven’t found their disabilities yet...” – Chris Downey
- Your employees are people – they’re going to get older, acquire disabilities, deal with cancer and illnesses, and have families. The way that you manage these human issues will define who you are as an organization.



Questions?

