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## Integrated Absence Management



# WHAT IS “REASONABLE” WHEN EVALUATING ACCOMMODATIONS?

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Title I of the Americans with Disabilities Act (ADA) requires employers to engage in a timely, good faith interactive process and provide reasonable accommodation. Employers are not required to provide accommodations; they are required to provide “reasonable” accommodations. What, then, makes an accommodation objectively reasonable?

Reasonable accommodations include appropriate measures that allow applicants or employees with a disability to perform a job’s essential functions. Examples include facility modifications, schedule changes, equipment purchases, examination modifications, and policy changes. Failure to provide reasonable accommodations can result in costly and time-intensive lawsuits.

For example, more than 22,800 disability-related claims were filed in 2021, a number that equated to more than 37% of all discrimination claims filed with the Equal Employment Opportunity Commission (EEOC).<sup>1</sup> And in 2021, employers paid more than \$122.2 million in total monetary benefits for EEOC-filed disability-related suits,<sup>2</sup> with discharge (66.7%) and failure to accommodate (55.6%) the most frequent allegations.<sup>3</sup>

We often discuss what makes accommodations unreasonable. The common terms “direct threat” and “undue hardship” (a high bar to prove) come directly from the EEOC guidelines<sup>4</sup> and can help employers evaluate requests and/or defend litigation. To prove undue hardship, employers must consider the cost of the accommodation, the size and financial resources of the employer, and the nature and structure of its operation. In addition, employers must try to identify another accommodation that would not pose a hardship. If cost is a factor, employers must also consider whether funding for an accommodation is available from an outside source, such as a vocational rehabilitation agency, and if the cost of providing the accommodation can be offset by state or federal tax credits or deductions.

To help employers find a “yes” versus trying to justify a “no” with accommodation requests, it is generally more helpful to evaluate accommodation requests by asking whether the accommodation being explored or requested will help the employee perform the job fully and safely.

## Safety

After clarifying an employee’s work restrictions or functional limitations when evaluating an accommodation, employers should ask whether the accommodation will enable the employee to do the job safely each day within the provided functional limitations/work restrictions and without exceeding them. When evaluating safety criteria for reasonableness, employers should not consider natural disasters, emergencies, or other unpredictable activity.

## Full Performance of Essential Functions

If the safety criteria are met, employers should consider whether the accommodation would help an employee or applicant perform all essential job functions with the same effectiveness and efficiency as others in the position and with regular and reliable attendance.

When discussing this criterion, employers should use specifics of the job so everyone understands and hopefully agrees with the assessment. For example, instead of saying, “It would be a direct threat to accommodate you in this position,” employers should consider this approach for a custodian, whose work or functional limitations make essential job functions difficult to manage: “With your restriction of lifting no more than 10 pounds with either or both of your hands, it seems like you would not be able to perform trash duties and furniture moves, restock supplies, and perform other duties required of custodians. Do you agree?”

By discussing job specifics, employers avoid assumptions and explore job specifics to find and implement reasonable accommodations. They can implement alternatives after exploring suggestions and discussing why an alternative is preferred. The key is effective communication.



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