

Reasonable Accommodation: Disability

Overview

Reasonable accommodation requires an agency to accommodate the known physical or mental limitations of an applicant, or employee, who is a qualified individual with a disability, unless the agency can demonstrate the accommodation would impose an undue hardship on the operation of its program. 29 CFR 1614.203(c)(1).

Key Points

[These key-point summaries cannot reflect every fact or point of law contained within a source document. For the full text, follow the link to the cited source.](#)

"The standards used to determine whether section 501 of the Rehabilitation Act of 1973, as amended (29 USC 791), has been violated in a complaint alleging nonaffirmative action employment discrimination under this part shall be the standards applied under Titles I and V (sections 501 through 504 and 510) of the Americans with Disabilities Act of 1990, as amended (42 USC 12101, 12111, 12201), as such sections relate to employment. These standards are set forth in the Commission's ADA regulations at 29 CFR part 1630." 29 CFR 1614.203(b).

An individual with a disability is one who: (1) has a physical or mental impairment, which substantially limits one or more of the person's major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment. 29 CFR 1630.2(g).

Substantially limits is defined as the inability to perform a major life activity, or significant restriction as to condition, manner or duration with which a person performs a major life activity compared to the average person. Factors to consider when assessing whether someone is substantially limited are the nature, severity, and duration of the impairment, and the long-term or permanent impact of the impairment. 42 USC 12102, 29 CFR 1630.2(j).

"[T]o be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives. The impairment's impact must also be permanent or long-term." *Williams v. Toyota Motor Manufacturing, Kentucky, Inc.*, 122 S. Ct. 681 (2002), 102 FEOR 90001.

"When addressing the major life activity of performing manual tasks, the central inquiry must be whether the claimant is unable to perform the variety of tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with her specific job." *Williams v. Toyota Motor Manufacturing, Kentucky, Inc.*, 122 S. Ct. 681 (2002), 102 FEOR 90001.

An individual cannot establish disability status merely by submitting evidence of a medically diagnosed impairment. Instead, the individual must show that the condition at issue limits that particular person substantially in a major life activity. In making this determination, the Supreme Court noted that symptoms from an impairment can vary widely from person to person. *Williams v. Toyota Motor Manufacturing, Kentucky, Inc.*, 122 S. Ct. 681 (2002), 102 FEOR 90001.

The EEOC applied *Williams*, and found the complainant, who worked for the agency as a welder, was not an individual with a disability. Although he had limited movement of his left hand and fingers due to a severed nerve, and was limited in performing overhead welding, he did not show

how his impairment affected his ability to perform activities "central to most people's daily lives." *Herbert v. Department of the Navy*, EEOC Nos. 01996432, 01A05665 (2002), 102 LRP 13782.

An individual with an impairment is not substantially limited in one or more major life activities if corrective measures mitigate the impairment. An individual must be presently disabled, the disability must substantially limit a major life activity, and an individual inquiry of the specifics of the current situation are required. Individuals with medical conditions that can be corrected through medication or other routine treatments (e.g., hearing aids, blood pressure medicine, glasses/contact lenses) are not covered by the ADA. *Sutton v. United Air Lines*, 527 U.S. 471 (1999), 99 FEOR 9003, *Murphy v. U.S. Postal Service*, 527 U.S. 516 (1999), 99 FEOR 9004, *Kirkinburg v. Albertsons*, 527 U.S. 555 (1999), 99 FEOR 9005.

The determination of whether a person is an individual with a disability must be based on the person's condition at the time of the discrimination, including any positive or negative side effects of mitigating measures used by the individual. *Strutynski v. Department of the Interior*, EEOC No. 01980837 (2001), 102 FEOR 3009.

Major life activities include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, sitting, standing, lifting, reaching, concentrating, interacting with others, reading, among other activities 42 USC 12102; 29 CFR 1630.2(h)(2)(i), *Patterson v. Department of the Air Force*, 74 M.S.P.R. 648 (1997), 97 FMSR 5223.

The existence of a physical defect does not necessarily rise to the level of an impairment of a major life activity. Being unable to perform one job does not mean an employee is handicapped within the meaning of the law. *Jasany v. U. S. Postal Service*, No. 84-3134 (6th Cir. 1985), 85 FEOR 7017.

A qualified handicapped employee is one who with or without, reasonable accommodation, can perform the essential functions of a position without endangering the health or safety of the individual or others. 29 CFR 1614.203(a)(6).

It is not necessary that an employee use any specific words in seeking a reasonable accommodation; he simply must let an employer know that he has a disability. *Gibson v. Department of the Navy*, EEOC No. 01943540 (1995), 96 FEOR 1008.

Undue hardship that would excuse an agency from providing reasonable accommodation refers to situations in which a proposed reasonable accommodation would result in an unduly extensive, substantial or disruptive change or a fundamental alternation to the nature of the work. Factors to consider include the overall size of the agency's program with respect to number of employees, the type and number of facilities, size of the budget, the type of agency operation, composition and structure of the agency's workforce, and the nature and cost of the accommodation. If an undue hardship would result, the accommodation is not required. 29 CFR 1630.2(p); 42 USC 12111.

The commission concurred with the MSPB's final decision of no discrimination and determined that the evidence sufficiently established that the agency could not reasonably accommodate the complainant's extreme sensitivity to latex without incurring undue hardship. *Lamberson v. Department of Veterans Affairs*, EEOC No. 03A00049, 102 FEOR 1181 (2002).

In *U.S. Airways, Inc. v. Robert Barnett*, 122 S. Ct. 1516 (2002), 102 FEOR 90005, the U.S. Supreme Court held that, ordinarily, an employer's showing that the employee's requested accommodation conflicted with seniority rules would be sufficient to show, as a matter of law, that the accommodation was not reasonable. The Supreme Court explained that a typical seniority system provides important employee benefits that might be undermined if an employer were required to show more than the system's existence. However, it found an employee would still

have an opportunity to show that "special circumstances" existed that would render the exception to the seniority rules reasonable. Special circumstances might modify the important expectations created by a seniority system to the point where the requested accommodation would not likely make any difference in employee expectations that the employer abide by the rules of the seniority system. Thus, the Court remanded the case, affording both the airline and the cargo handler an opportunity to present evidence with respect to whether special circumstances existed that rendered the requested reassignment a reasonable accommodation despite the seniority system.

An agency must show why reasonable accommodation was not possible after carefully weighing the risks and alternatives in concluding that accommodation would result in an undue hardship. *Clark v. U.S. Postal Service*, 74 M.S.P.R., (1997), 97 FMSR 5210; *Raspanti v. Department of the Army*, EEOC No. 01942756 (1997), 97 FEOR 1219.

Holding a position open and vacant for an indefinite period of time constitutes undue hardship. *Stith v. Department of Housing and Urban Development*, EEOC No. 03880057 (1988), 88 FEOR 3204.

A determination of whether a person with a disability can be accommodated is made by the agency after an individual assessment of the person's medical condition, job skills, work environment and agency resources. *Wesson v. U.S. Postal Service*, EEOC No. 01976166 (1999), 99 FEOR 1222.

Before excluding someone from work due to medical reasons, an agency needs to assess the probability and severity of potential injury if the employee were to continue working, rather than make a simple assumption that someone cannot perform the position's duties. *Flowers v. U.S. Postal Service*, EEOC No. 01984878 (1999), 100 FEOR 3027.

Reasonable accommodation includes making working facilities accessible, job restructuring, part time or modified work schedule, acquisition or modification of equipment or devices, readers or interpreters. *Edwards v. U. S. Postal Service*, EEOC No. 01932014 (1994), 94 FEOR 20021; see also 29 CFR 1614.203(c)(2).

In addressing reasonable accommodation, the parties should engage in an informal and flexible interactive process to identify the precise limitations of the individual and what accommodations could overcome those limitations. 29 CFR 1630.2(o)(3).

The EEOC affirmed the final agency decision and found the agency could not be held liable for failing to accommodate the complainant because he was responsible for the breakdown in the interactive process regarding the accommodation he sought. *Zorn v. U.S. Postal Service*, EEOC No. 01990042 (2001), 102 FEOR 1076.

If an employee seeks reasonable accommodation, it may be necessary to obtain medical documentation in order to gauge the severity and duration of the employee's physical limitations, and to forecast the need for any work absences. *Sigler v. Department of the Army*, 63 M.S.P.R. 103 (1994), 94 FMSR 5315.

All medical records are subject to the confidentiality provisions of the Privacy Act. This means that usually physician treatment records are appropriate for disclosure for medical personnel only. Managers have a right to access information only based on a need-to-know basis in order to make staffing decisions. 5 USC 552.

Although an agency should consider an employee's suggestions for reasonable accommodation, and address them in any possible subsequent proposal and decision letters, it is not obligated to provide the reasonable accommodation preferred by the employee. Any reasonable accommodation by the agency that satisfies its legal obligations is sufficient. *Gore v. Department*

of Health and Human Services, EEOC No. 01931927 (1994), 94 FEOR 3411, see also *Langon v. Department of Health and Human Services*, EEOC No. 01841218 (1986), 86 FEOR 3165; *White v. Department of Veterans Affairs*, EEOC No. 01941751 (1995), 95 FEOR 1142, *Goodlow v. Department of Veterans Affairs*, EEOC No. 01931829 (1994), 94 FEOR 3349; *Wellman v. U.S. Postal Service*, EEOC No. 01944745 (1996), 96 FEOR 1087.

Although an agency must consider the possibility of job restructuring, an agency is under no obligation to eliminate the essential functions of a position. *Stots v. U. S. Postal Service*, EEOC No. 03830030 (1987), 88 FEOR 3007.

Job restructuring means reallocating or redistributing nonessential, marginal functions that an employee cannot perform due to a disability, or altering how and when work is performed. Appendix to 1630.2. [Editor's note: to reach the appendix, scroll past 29 CFR 1630.16.

An agency is not required to create a new position as part of reasonable accommodation. If an agency puts an employee on a light duty assignment, the burden is on the agency to prove it would be an undue hardship to keep the employee on that assignment. *Tavarozzi v. U.S. Postal Service*, EEOC No. 01942481 (1996), 96 FEOR 3197.

In May 2002, the EEOC amended its rules so, with regard to conduct arising on or after the effective date of the change (June 20, 2002), the previous restrictions on the accommodation of reassignment in 29 CFR 1614.203 do not apply. Reassignment to a funded vacant position: (1) is now available as a reasonable accommodation to probationary employees; (2) may be offered even if the position being considered for reassignment has been posted in a vacancy announcement; and (3) the scope of the search for a position for reassignment is no longer limited to the local commuting area. The only limitation on reassignment as a reasonable accommodation is the same limitation placed on all accommodations under the Rehabilitation Act: that of undue hardship.

An agency can require that the individual not pose a direct threat to health and safety in the workplace. A direct threat is defined as "a significant risk of substantial harm to the health and safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation." To determine if an individual poses a direct threat, the agency must conduct "an individualized assessment of the individual's present ability to safely perform the essential functions of the job." 29 CFR 1630.2(r).

In a unanimous decision issued in June 2002, the U.S. Supreme Court ruled that an individual with a disability could be barred from a job that would pose a threat to his health or safety -- a position that supports the EEOC's regulations. *Chevron U.S.A. Inc. v. Echazabal*, 122 S. Ct. 2045 (2002), 102 LRP 12941.

An agency needs to make a "good faith effort" to reassign an employee. However, if it cannot find an appropriate vacancy, the agency can remove the employee. *Almazon v. Department of the Air Force*, 26 M.S.P.R. 318 (1985), 85 FMSR 5064.

If an employee notifies his employer after taking 12 weeks of FMLA leave, that he is no longer able to perform the essential functions of his current or an equivalent position, the employee could be terminated if the employee is covered under FMLA alone. 5 CFR 1630.1208. If however, the employee's serious health condition is also an ADA disability, the ADA requires the agency to consider other types of accommodation, including reassignment. 42 USC 12111.

Good faith efforts alone do not satisfy the agency's obligation to provide reasonable accommodation. *Raspanti v. Department of the Army*, EEOC No. 01942756 (1997), 97 FEOR 1219. However, so long as an agency exerts a "good faith effort" to reasonably accommodate an employee, the agency is shielded from compensatory damages, even if a disability discrimination determination is made. *Lullen v. U.S. Postal Service*, EEOC No. 01951340 (1996), 97 FEOR

3070.

The agency made appropriate efforts to accommodate the hearing-impaired complainant when it dutifully explored accommodation options and kept the complainant informed of its efforts. The EEOC rejected the complainant's assertion that the agency did not act in a timely manner. *Brown v. Department of Transportation*, EEOC No. 01970394 (2000), 101 FEOR 3041.

The EEOC awarded the complainant \$115,000 in non-pecuniary damages for the significant physical and emotional distress she suffered when the agency failed to accommodate her temperature dysfunction. Her condition caused her to sweat excessively and she was required to change her clothes several times each day. She was detailed to another unit where the manager provided recommended accommodations, including 8-foot partitions around her desk to block airflow and a space heater on an elevated platform. The complainant was also allowed to work credit hours when she could, so she could use the time when she needed to change her clothes. However, when she returned to her regular position in July 1996, and sought the same accommodations, she was allowed nothing more than one partition behind her desk. She asserted that working in the breezy workspace with "sopping" wet clothes numbed her hands and caused her to suffer unbearable physical pain. *Rivers v. Department of the Treasury*, EEOC No. 01992843 (2002), 102 FEOR 1141.

An agency can not withdraw accommodation as a form of discipline. *Neal v. U.S. Postal Service*, EEOC No. 01924024 (1993), 94 FEOR 3130.

Reasonable accommodation does not bar discipline for misconduct when such misconduct without a disability would result in discipline. *Gibson v. Secretary of Veteran Affairs*, EEOC No. 02920018 (1993), 92 FEOR 23567.

An agency is not required to give an alcoholic employee a firm choice between treatment and disciplinary action if its own regulations do not require it to do so. Alcoholic employees are held to the same conduct and performance standards as other employees. *Johnson v. Department of the Interior*, EEOC No. 03940100 (1996), 96 FEOR 3123, *Kimble v. Department of the Navy*, 70 M.S.P.R. 617 (1996), 96 FMSR 5216.

The Rehabilitation Act, through amendments incorporating part of the ADA, does not cover individuals engaging in the illegal use of drugs as defined under the Controlled Substance Act. 29 CFR 1630.3.

Occasional special assistance (part time assistants for one or two days a quarter for a special project) did not create an undue hardship. *Raspanti v. Department of the Army*, EEOC No. 01942756 (1997), 97 FEOR 1219.

An agency must provide specific evidence how accommodation would constitute an undue hardship. *Spaulding v. U. S. Postal Service*, EEOC No. 01932868 (1994), 94 FEOR 11640. See also, *Swafford v. Tennessee Valley Authority*, EEOC No. 01831944 (1984), 84 FEOR 1012.

Reassignment is within the scope of reasonable accommodation and the burden to prove a reassignment is an undue hardship rests with agency. *McQueen v. Department of Justice*, EEOC No. 03930006 (1993), 93 FEOR 3285.

The Rehabilitation Act was amended in 1998 to require federal agencies to make their electronic and information technology accessible to people with disabilities. Agencies must give disabled employees and members of the public access to information that is comparable to the access available to others. 29 USC 794d