

# Reasonable Accommodations Under the ADAAA

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The Americans with Disabilities Act (ADA) was enacted in 1990 and amended by the Americans with Disabilities Act Amendments Act (ADAAA) of 2008, effective Jan. 1, 2009. On March 25, 2011, the Equal Employment Opportunities Commission (EEOC) published its final regulations and interpretive guidelines on the ADAAA, effective May 24, 2011. However, the guidelines and ADAAA are not retroactive.

In its simplest form, the ADA/ADAAA requires employers with 15 or more employees to provide reasonable accommodation to employees who have a “disability” unless it would cause an undue hardship for the employer.

## What Constitutes a Disability?

An employee is considered to have a disability if that person 1) has a physical/mental impairment that substantially limits one or more of the employee’s major life activities, 2) has a record of such an impairment or 3) is regarded by an employer as having a disability. A “physical/mental impairment” is a physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more body systems.

The EEOC regulations give examples of major life activities, such as: breathing, caring for oneself, communicating, hearing, lifting, reaching, seeing, sitting, speaking and walking.

Major life activities also include the operation of major bodily functions, including functions of body systems and the operation of an individual organ within a body system (heart, kidney, etc.).

According to the ADAAA and EEOC regulations, an impairment that is episodic (e.g., diabetes, epilepsy, bipolar disorder, etc.) or in remission (e.g., cancer) meets the definition of disability if it would substantially limit a major life activity when active.

The regulations list certain impairments that typically are deemed to be disabilities, such as: autism, blindness, cerebral palsy, HIV infection, missing limbs (partially or completely), obsessive-compulsive disorder, post-traumatic stress disorder and schizophrenia. Pregnancy itself is not a disability, but certain conditions resulting from pregnancy (e.g., gestational diabetes) could meet the definition of a disability.

## ‘Reasonable Accommodation’

An employee with an impairment that meets the above definition of a disability is entitled to a reasonable accommodation unless it would cause an undue hardship to the employer. A “reasonable accommodation” is a modification that removes a barrier that prevents an employee from attaining the same level of performance or enjoying equal benefits and privileges as are available to other similarly-situated employees without a disability.

“Undue hardship” for the employer means an accommodation that is too costly, extensive, disruptive, or would fundamentally alter the nature or operation of the employer’s business. If cost is the sole issue, an employer must determine whether funding is available from an outside source (e.g., federal/state agency) to pay for all or part of the accommodation, or whether the business qualifies for tax credits or deductions to offset the cost of the accommodation.

It is the employee’s responsibility to request a reasonable accommodation. The request need not mention the ADA, nor the phrase “reasonable accommodation.” Requests do not need to be in writing. If the request is spoken, an employer should document the request in a confirmatory letter to the employee.

## A Joint Effort

Moving forward, the employer and the employee should work together to determine an appropriate reasonable accommodation under the circumstances of the disability.

During this process, the employer may ask the employee relevant questions in order to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed or desired.

An employer is not required to provide the accommodation an employee specifies, but instead may provide any reasonable accommodation it chooses, as long as the accommodation removes the workplace barrier at issue.

Examples of reasonable accommodations are as follows.

- Providing a teletypewriter (TTY) machine for deaf/hard of hearing employees
- Translating documents into Braille for blind employees
- Allowing a diabetic employee with dietary restrictions to eat more often or have lunch at a different time
- Providing a wheelchair-accessible desk

A reasonable accommodation does not include allowing an alcoholic or drug-addicted employee to drink alcohol or use illicit drugs at work (however, adjusting working hours to allow a recovering addict to attend AA/NA meetings may be a reasonable accommodation). Likewise, an employer is not required to provide personal use items such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids or similar devices.

Both employers who are requested to provide a reasonable accommodation and employees who may be entitled to a reasonable accommodation should speak with an attorney to determine their rights and obligations.

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