



PROTECTION & ADVOCACY
FOR PEOPLE WITH DISABILITIES, INC.

3710 LANDMARK DRIVE, SUITE 208, COLUMBIA, SC 29204
803-782-0639; FAX 803-790-1946
1-866-275-7273 (VOICE) 1-866-232-4525 (TTY)
E-mail: info@pandasc.org
WEBSITE: www.pandasc.org

PROTECTION & ADVOCACY INFORMATION PACKET

REASONABLE ACCOMMODATION AND YOUR RIGHTS AS AN EMPLOYEE WITH A DISABILITY

The packet provides basic information about the right of employees with physical or mental disabilities to reasonable accommodations needed to perform their jobs. It contains the following:

- **WHERE TO GET ADDITIONAL INFORMATION** See page 2
- **REASONABLE ACCOMMODATION UNDER THE AMERICANS' WITH DISABILITIES ACT (ADA)** See pages 3-8
- **IDEAS FOR WRITING AN ACCOMMODATION REQUEST LETTER** See page 9
- **SAMPLE ACCOMMODATION REQUEST LETTER** See page 10

Please contact P&A for assistance if you feel your employer has discriminated against you based on your disability. You may also contact the Equal Employment Opportunity Commission (EEOC) or the South Carolina Human Affairs Commission (SCHAC) to file a complaint. Their contact information is listed on page 2 of this packet.

**If you need additional information, call the P&A Help Line:
1-866-275-7273 (Voice) 1-866-232-4525 (TTY) 1-803-782-0639 (Columbia SC
area-Voice)**

You may also view fact sheets and articles on disability issues at our web site:
www.pandasc.org

This publication provides legal information, but is not intended to be legal advice. The information was based on the law at the time it was written. As the law may change, please contact the P&A Help Line for updates.

This publication is funded by the U.S. Department of Health and Human Services (Administration on Community Living; Substance Abuse and Mental Health Services Administration; and Health Resources and Services Administration), and the U.S. Department of Education (Office of Special Education and Rehabilitative Research). It does not necessarily represent the official views of the funding authorities.

P&A does not discriminate on the basis of disability, race, color, creed, national origin, ethnicity, ancestry, citizenship, age, religion, sex or sexual orientation, veteran status or any other class protected by law in the provision of its programs or services. Pete Cantrell is P&A's designated coordinator for Sec. 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

October 2013 ADA

SOUTHEAST ADA CENTER

1419 Mayson St SE
Atlanta, GA 30324
1-800-949-4234
(CALLS FROM FL, GA, KY, MS, NC, SC, TN)
404-541-9001 [VOICE/TTY]
404-541-9002 (fax)
E-mail: ADAsoutheast@syr.edu
www.adasoutheast.org

JOB ACCOMMODATION NETWORK (JAN)

West Virginia University
PO Box 6080
Morgantown, WV 26506-6080
1-800-526-7234 (voice); 1 877- 781-9403 (TTY); 304-293-5047 (fax)
For E-Mail go to: <http://AskJAN.org>

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NATIONAL OFFICE
1801 L Street, NW Washington, DC 20507
1-800-669-4000 (voice)
<http://www.eeoc.gov>
1-800-666-EEOC (publications)

FOR LOWCOUNTRY SC:
(Allendale, Bamberg, Barnwell, Berkeley
Charleston, Colleton, Dorchester,
Georgetown, Hampton, Jasper, and
Williamsburg counties)

ALL OTHER SC COUNTIES:

SAVANNAH LOCAL EEOC OFFICE
7391 Hodgeson Memorial Dr., Ste. 2001
Savannah GA 31406-2579
1-800-669-4000 (Voice)
1-800-669-6820 (TTY)

GREENVILLE LOCAL EEOC OFFICE
301 N. Main St., Ste. 1402
Greenville SC 29601-9916
1-800-669-4000 (Voice)
1-800-669-6620 (TTY)

SOUTH CAROLINA HUMAN AFFAIRS COMMISSION

1026 Sumter, Suite 101
Mailing Address: P.O. Box 4490
Columbia, SC 29240
1-800-521-0725; 803-737-7800
[www.state.sc.us/schac/
information@schac.state.sc.us](http://www.state.sc.us/schac/information@schac.state.sc.us)

REASONABLE ACCOMMODATION UNDER THE ADA

What is Reasonable Accommodation?

The Americans with Disabilities Act (ADA) requires employers to make reasonable accommodation for a qualified individual with a known physical or mental disability. Potential reasonable accommodations include job restructuring, reassignment to a vacant position, part-time or modified work schedules, assistive technology, or aides or qualified interpreters.

Although the ADA does not require employers to make accommodations that pose an "undue hardship" (defined as significantly difficult or expensive), the experiences of employers around the nation demonstrates that many accommodations cost nothing, and few pose the "significant expense" that many employers fear. Studies conducted in 1986 and in 1992 showed that more than half of the accommodations made for employees with disabilities cost nothing, while another fifteen percent cost under \$500. Tax credits are available to businesses that remove architectural barriers, target jobs for individuals with disabilities, or provide assistive technology or interpreters to workers with disabilities. Employers are required to make reasonable accommodation for qualified individuals with a disability, who are defined by the ADA as individuals with a disability who satisfy the job-related requirements of a position held or desired, and who can perform the "essential functions" of such position, with or without reasonable accommodation. The employer identifies the job's essential functions; job descriptions prepared before an individual is interviewed or selected for a position are considered evidence of a job's essential functions. If the individual cannot perform an essential function, even with accommodation, the individual is not considered "a qualified individual with a disability" under the law.

The employer should confer with the employee with regard to the type of accommodation that will enable the employee to perform the essential functions of the position. The requirements of the particular position and the employee's physical or mental limitations should be evaluated in order to determine the accommodation that will be effective.

If a reasonable accommodation poses an undue hardship, it need not be implemented. Undue hardship is evaluated by assessing various factors, including the nature and net cost of the accommodation, the overall financial resources of the facility and of the business, and the impact of the accommodation on the operation of the facility. Accommodations of a personal nature (such as a guide dog for a visually-impaired employee, or a wheelchair) would not be the employer's responsibility.

The employer need not create a new job for the person with the disability, nor must the employer reallocate essential functions to another worker. An employer may be required to restructure a job by reallocating nonessential, marginal job functions. For example, the Postal Service refused to promote a hearing-impaired secretary because she could not answer the telephone. The court ordered the Postal Service to promote the individual, noting that several other secretaries were available to answer the telephone, and that simply because telephone answering was considered a low status assignment did not make it an essential function of the secretary's job.

Employers who fear that accommodating a worker with a disability will lower the morale of co-workers will not find this a helpful defense to an ADA charge. Nor will the concern that co-workers or customers will not wish to associate with an individual with a disability be an appropriate reason to deny such an individual employment.

Accommodating a Worker with a Disability

The accommodation process begins before the disabled worker is hired (or identified, if it is a current employee who becomes disabled after being hired). Written job descriptions prepared before advertising or interviewing applicants are evidence of whether particular job functions are essential, but other evidence, such as what previous or current holders of the job actually do, is also relevant. Job descriptions should be reviewed to ensure that they include the essential functions of each job, particularly with regard to physical requirements. Statements such as "all incumbents must perform all functions of the position," or "there is no light duty in this department" are not determinative of whether a reasonable accommodation must be provided.

Recruiters or interviewers must be trained with regard to inquiries which are permissible under the ADA. Under the ADA, an employer may not ask about the existence, nature, or severity of a disability and may not conduct medical examinations until after it makes a conditional job offer to the applicant. This prohibition ensures that the applicant's hidden disability is not considered prior to the assessment of the applicant's non-medical qualifications. At this pre-offer stage, employers may ask about an applicant's ability to perform specific job-related functions. An employer also may ask other questions that are not disability-related and may require examinations that are not medical.

After making a job offer, an employer may require a medical examination or make disability-related inquiries if all entering employees are subject to the exam or inquiry. If an examination or inquiry screens out an individual because of disability, the exclusionary criterion must be job-related and consistent with business necessity. The employer also must show that the criterion cannot be satisfied and the essential functions cannot be performed with reasonable accommodation. Employers are also permitted to conduct medical examination and make disability-related inquiries of employees if such exams or inquiries are job-related and consistent with business necessity.

Any medical information obtained must be kept confidential by the employer. This means that the employer must collect and maintain the information on separate forms and in separate medical files. The employer may disclose the information only to persons and entities specified in the ADA.

Employers may use any kind of test to determine job qualifications. However, qualification standards, tests or other selection criteria that screen out an individual with a disability or a class of individuals with disabilities will violate the ADA unless shown to be job-related and consistent with business necessity. Even if this showing can be made, an employer must consider whether the criteria can be met, or job performance accomplished with the provision of reasonable accommodation. In addition, tests must be administered to an applicant or employee with a disability in a

way that ensures that the test results accurately reflect the skills, aptitude, or whatever other factor is being tested, rather than reflecting the impaired sensory, manual or speaking skills of the person, unless these skills are what is being tested.

Reasonable Accommodation and Safety

Some employers are concerned that a worker with a disability could be a safety hazard, either to herself or to co-workers or customers. The law takes this concern into account, but only if it is founded upon clear, documented evidence that the individual is a "direct threat" to herself or others because of the nature of the job and the specific characteristics of that individual's disability.

In determining whether an individual with a disability poses a direct threat, including an individual with a contagious disease, the factors to be considered include:

- (1) The duration of the risk;
- (2) The nature and severity of the potential harm;
- (3) The likelihood that the potential harm will occur; and
- (4) The imminence of the potential harm.

Part of the reasonable accommodation determination is an analysis of whether the individual can be accommodated in a way that eliminates the direct threat or reduces it to an acceptable level. For example, an employer would not be required to hire an individual who is blind to drive a bus, but several courts have said that disabilities such as diabetes do not automatically preclude an individual from holding a bus driver's job. The key here is to obtain individualized medical information about the limitations that are posed by this worker's disability and the probable harm that this individual's specific physical or psychological problems will pose for the position in question.

Reasonable Accommodation and Worker Misconduct

The ADA protects individuals with mental as well as physical disabilities, and the reasonable accommodation requirement applies in the same way for both kinds of disabilities. However, employers may hold individuals with disabilities to the same performance and conduct standards as other workers; if the worker engages in misconduct that warrants discipline under the employer's policy, even if the conduct is related to the individual's disability, the employer may discipline the worker.

If an employee requests accommodation prior to engaging in misconduct, e.g., leave to attend therapy sessions, the accommodation must be provided unless it would impose an undue hardship. On the other hand, if the employee engages in misconduct prior to requesting the accommodation, the employer may impose the appropriate discipline. This may include discharge, depending on the employer's discipline policy and the nature of the misconduct involved. If the employer has a policy of progressive discipline, the employer may impose discipline short of discharge and then provide an accommodation that would enable the employee to meet the conduct standards.

Off-duty misconduct may also be grounds for discharge or discipline, even if the worker

asserts that the disability caused the misconduct. In most cases that have reached the courts, the misconduct was related to alcohol or drug abuse, and the employer was able to demonstrate that being required to retain the individual would be an undue hardship because the job itself required the individual to demonstrate good judgment or to be law-abiding (such as a police officer or an FBI agent).

Employees whose excessive absences or tardiness create problems for the employer are not necessarily protected even if the attendance problems are related to the disability. However, the employer must consider whether a reasonable accommodation (such as a different work schedule, additional paid or unpaid time off, or working at home) is possible and whether such an accommodation would constitute an undue hardship.

Employers should train their staff about the general requirements of the ADA, with particular emphasis on defining the essential functions of each position and the accommodation requirement. Learning to assess the individual first and the disability second, working with the individual and his or her counselor, medical professional, or other knowledgeable persons in fashioning the appropriate accommodation, and responding to requests to review the effectiveness of the accommodation will very likely satisfy the demands of the ADA, the practical needs of the individual with a disability, and the employer's need for a productive and committed workforce.

The following are national resources available to you that will provide you with further information on the employment provisions of the Americans with Disabilities Act of 1990 and reasonable accommodation:

[See page 2 for current resource information]

This publication was written by Barbara A. Lee, Associate Professor, Institute of Management and Labor Relations, Rutgers University, New Brunswick, New Jersey. This publication is taken from a more extensive review of the topic entitled "Reasonable Accommodation Under the Americans with Disabilities Act" which is currently available for purchase from your Regional Disability and Business Technical Assistance Center at 800-949-4232, or from LRP Publications (specify Product #31015.ACCOM, 47 pp., \$16), PO Box 980, Horsham, PA 19044-0980, phone 1-800-341-7874, Fax 1-215-784-9639.

- Funding Source—

This material was produced by the Program on Employment and Disability, School of Industrial and Labor Relations - Extension Division, Cornell University, and funded by a grant from the National Institute on Disability and Rehabilitation Research (grant #H133D10155). It has been reviewed for accuracy by the U.S. Equal Employment Opportunity Commission. However, opinions about the Americans with Disabilities Act (ADA) expressed in this material are those of the author, and do not necessarily reflect the viewpoint of the Equal Employment Opportunity Commission or the publisher. The Commission's interpretations of the ADA are reflected in its ADA regulations (29 CFR Part 1630) and its Technical Assistance Manual for Title I of the Act.

Cornell University is authorized by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the Americans with Disabilities Act (ADA).

However, you should be aware that NIDRR is not responsible for enforcement of the ADA. The information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the Act, nor binding on any agency with enforcement responsibility under the ADA.

In addition to serving as a National Materials Development Project on the Employment Provisions of the Americans with Disabilities Act of 1990, the Program on Employment and Disability also serves as the training division of the Northeast Disability and Business Technical Assistance Center. This publication is one of a series edited by Susanne M. Bruyère, Ph.D., C.R.C., Director of the ILR Program on Employment and Disability at Cornell University.

- Other Titles in this Implementing the ADA Series—
- A Human Resource Perspective on Implementing the ADA
- Reasonable Accommodation Under the ADA
- Pre-Employment Screening and the ADA
- Pre-Employment Testing and the ADA
- Health Benefits Plans and the ADA
- The ADA and Personnel Training
- The ADA and Collective Bargaining Issues
- The ADA and Injured Workers
- Cultural Diversity and the ADA
- The ADA and Total Quality Management

For further information about publications such as these, contact the ILR Program on Employment and Disability, Cornell University, 102 ILR Extension, Ithaca, New York 14853-3901; or at 607/255-7727 [updated 10-28-13] (Voice), 607/255-2891 (TTY), or 607/255-2763 (Fax)

IDEAS FOR WRITING AN ACCOMMODATION REQUEST LETTER

With the passage of the Americans with Disabilities Act (ADA) in 1990, employers are required to provide reasonable accommodations to qualified employees and applicants with known physical or mental limitations unless such accommodations would impose an undue hardship (e.g. costly, extensive, substantial, disruptive or alters the nature of the business). According to the ADA, it is generally the responsibility of the applicant or employee with a disability to inform the employer that an accommodation is needed to participate in the application process, to perform essential job functions or to receive equal benefits and privileges of employment. An employer is not required to provide an accommodation if they are unaware of the need, however they are required to inform people with disabilities of their right to request reasonable accommodations. The ADA goes on to state that the applicant or employee does not have to specifically request a "reasonable accommodation", but must only let the employer know that some adjustment or change is needed to do a job because of the limitation caused by the disability.

Since the ADA does not provide specific guidelines on how to request an accommodation, an employee with a disability may choose to request accommodations verbally or in writing. However, it may be beneficial to request accommodations in writing in order to maintain a record for future reference. Employees should also determine if their employer has guidelines established for accommodation requests. If not, the following information has been developed to assist individuals in writing an accommodation request letter. A sample format is provided as well as ideas for the content. Please note, this information is to be used as a guide for format and content only and is not legal advice. If legal advice is needed contact a legal service.

These materials were prepared by Linda C. Batiste and Ryan D. Kittle, Human Factors Consultants with the Job Accommodation Network. 12/95

Accommodation Request Letter

What to consider when composing such a letter: (The following accommodation request letter format is only an example of what could be considered when composing such a letter. This is not an official format, but rather just a tool that could be used to assist persons with ideas that may be helpful when writing their own letters).

- * Date of Letter
- * Your name & address
- * Employer's name & address

Dear (e.g. Mr., Ms., Supervisor):

Body of Letter: Content to Consider:

- * Identify yourself as a person with a disability
- * State that you are requesting accommodations under the ADA
- * Identify your specific problematic job tasks
- * Identify your accommodation ideas
- * Request your employer's accommodation ideas
- * Refer to medical documentation that you have attached to letter
- * Ask that your employer respond to your request in a reasonable amount of time

Sincerely,

Your signature

* You may decide to attach medical documentation to your letter to establish that a record of an impairment exists. (An employer may request a record of an impairment when an accommodation is requested.)

Ms. Jane Doe
112 Smith Drive
Greenville, SC 29606

November 15, 2013

Mr. John Smith
President, RPO, Inc.
338 Creekside Drive
Greenville, SC 29606

Dear Mr. Smith:

My name is Jane Doe. I have been a data entry clerk with RPO, Inc. for the past seven months. I also have a condition called diabetes mellitus, more commonly known as Type I diabetes. I informed the company of my condition when I applied for my current position. I have attached medical records documenting my disability.

I am writing this letter to request a job accommodation, under provisions established by the Americans with Disabilities Act of 1990. As a result of my condition, I have started to experience problems with my vision. Specifically, it has become increasingly difficult for me to read or to look at my computer screen. This limitation is affecting my performance, as I enter all assigned data into a computer system.

I believe that my situation can be accommodated with relative ease and little expense. A glare filter attached to my computer screen would reduce the amount of glare and eyestrain. Additional lighting in the room in which I work would also help.

Any of your ideas on how to accommodate my situation would be greatly appreciated. Please feel free to call, write or email me with your suggestions at any time. I do ask, though, that you respond to my request before the end of the month. I would like to resolve my situation and return to my previous performance level as soon as possible.

Sincerely,

Jane Doe

SAMPLE LETTER ONLY
Your letter should include your own
disability and accommodation needs.