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## A Doctor's Guide to Reasonable Accommodation Requests

*By Jeffrey J. Lorek\**

A doctor friend recently lamented how doctors and other health care providers are not well-versed in the law surrounding reasonable accommodations under Title I of the Americans with Disabilities Act of 1990 (ADA). Because these professionals often are called on to render critical opinions concerning patients' disabilities for purposes of workplace reasonable accommodation requests, they should understand how they fit into the ADA's reasonable accommodation process.

### Overview

The ADA requires employers to provide reasonable accommodations to employees with physical or mental impairments who are otherwise qualified to perform the essential functions of their jobs.<sup>i</sup> A physical or mental impairment constitutes a covered "disability" under the ADA if it substantially limits a major life activity.

Under the federal statute, major life activities include, but are not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working."<sup>ii</sup> Major life activities also include the operation of major bodily functions (e.g., immune system, digestive system, neurological, etc.).<sup>iii</sup>

An accommodation is simply some type of change in the work environment or in the way that things are customarily done by the employer. These changes enable qualified employees to enjoy equal employment opportunities, notwithstanding their medical limitations.

Reasonable accommodations can take [many forms](#), to include: (1) acquiring or modifying equipment or devices; (2) job restructuring; (3) part-time or modified work schedules; (4) reassignment to a vacant position; (5) adjusting or modifying tests, training materials or other employer policies; (6) providing readers or interpreters (or dictation software); and (7) otherwise making the workplace more readily accessible.<sup>iv</sup>

## Recent trend – emotional support animals / comfort animals

A recent example of a reasonable accommodation request that has garnered much attention in the medical community (and among employers) is that of an employee asking to be allowed to bring a comfort or support animal into the workplace. This would be an example of an adjustment of or modification to an employer's existing policy to not allow animals or pets in the workplace.<sup>v</sup> Doctors should analyze requests to bring animals to work in the same manner as any other reasonable accommodation request, and the information contained in this guide will help doctors analyze those requests.

## The interactive process

Before granting an employee's request for a reasonable accommodation, if an employee's disability is not obvious, an employer may ask the employee for some type of medical documentation that identifies the employee's ADA-covered "disability." The employer then discusses with the employee how that disability impacts the employee's ability to perform the essential functions of the his or her job. This back-and-forth dialogue is called the "interactive process," during which both the employer and employee work together to arrive at a mutually agreeable reasonable accommodation.

The chosen accommodation should be specifically tailored to enable the employee to continue performing the essential functions of his or her job, while not causing an "undue hardship" on the employer in terms of significant difficulty or expense. Doctors should understand that, under the ADA, employees are not entitled to their preferred reasonable accommodation and, ultimately, the accommodation selected may not be one that makes the employee happy.<sup>vi</sup>

## Essential functions vs. non-essential functions of the job

The ADA does not require an employer to modify or remove an employee's essential functions of the job.<sup>vii</sup> Also, if an employee is unable to be accommodated in a manner that would enable him or her to perform the "essential functions" of the job, then the employer may be permitted to discharge the employee for inability to perform the job (i.e., the employee would not be a "qualified individual with a disability").

Accordingly, when ascertaining whether an accommodation is reasonable, it is imperative to closely examine the employee's actual job functions. Some job functions are essential, while others are non-essential. An employee's formal job description document (sometimes the advertised job posting) typically outlines what the essential or critical functions of a job are, and which ones are non-essential.

Doctors should ask their patients for the job description document for their position, if such document it exists. For example, a warehouse worker's essential functions may include lifting boxes of a certain weight, raising boxes up and placing them on shelves, breaking down empty boxes, walking around a warehouse and locating supplies, etc. On the other hand, a non-

essential function of a warehouse job may be attending a monthly meeting in a conference room, or occasionally meeting one-on-one with a manager in a small back office.

In this example, if an employee requests that he or she be excused from attending meetings due to a mental impairment (e.g., post-traumatic stress disorder (PTSD), anxiety, or personality disorder), a reasonable accommodation might consist of restructuring the warehouse worker's job to remove the non-essential functions and/or transferring those non-essential functions to another employee or group of employees.<sup>viii</sup>

## The doctor's role in the reasonable accommodation process

Doctors and other health care professionals—especially, in the case of comfort or support animals for mentally impaired employees, mental health providers—play an integral role in assisting employers arrive at reasonable accommodations for their disabled employees. Given the complexity of the interactive process and different potential outcomes with respect to how employees are accommodated, doctors should be cognizant of how their diagnoses, opinions and letters to employers will be used.

Keep in mind, though, that “[t]he ADA does not alter a health provider's ethical or legal obligations. You should request a reasonable accommodation on behalf of a client or provide an employer with medical information about the client only if he or she asks you to do so and signs a release.”<sup>ix</sup>

Because reasonable accommodations need to be customized based on an individual employee's disability vis-à-vis his or her job functions, doctors cannot adequately address reasonable accommodation requests in a vacuum. There is certain information that doctors should review before opining on a reasonable accommodation. A doctor's ultimate recommendation will typically carry the day with an employer.

## A doctor's checklist during the reasonable accommodation process

When evaluating a patient in the context of an employee's request for a reasonable accommodation, there are several “checklist items” that doctors should ensure are covered. By covering the below points in an opinion or recommendation that will be used by a patient's employer, doctors can do their best to ensure that employers are following the law, and that employees' requests for reasonable accommodation are properly and thoroughly addressed.

- ✓ Is the qualifying disability a physical impairment or a mental impairment?
  - Is the impairment obvious to someone who is not a healthcare professional (e.g., a prosthetic leg)?
  - If it is not obvious, is there sufficient information for the employer to understand what the patient's disability is?
- ✓ What major life activity is affected by the employee's physical or mental impairment?

- Is a major bodily function impaired, such as digestive, endocrine, neurological, etc.?
- If so, how is it impaired?
- ✓ Have you reviewed the employee's job description or otherwise been apprised of what the employee's essential functions of the job are?
- ✓ How does the employee's impairment affect his or her ability to perform each of the essential functions of the job?
  - For example, explain in laymen's terms why an anxiety disorder prevents an employee from attending meetings where he or she is around other people.
- ✓ Can the employee perform the essential functions of his or her job without an accommodation?
- ✓ Does the employee need some type of accommodation to be able to perform the job in question?
  - What type of accommodation, when considering the particular disability, would be effective (e.g., a modified schedule, different equipment, cubicle space near a window, a stand-up desk, ear-plugs, etc.)?
- ✓ Have you analyzed the employee's desired accommodation, if any, in light of his or her particular disability?
- ✓ How will any accommodation enable the employee to perform the essential functions of the job?
  - For example, in the case of a comfort/support animal, how will having that animal at work enable the employee to perform his or her essential job functions given the specific mental impairment at issue?
- ✓ Are there alternative accommodations that, in your medical opinion, would be equally effective in enabling the employee to perform the essential functions of the job?
  - For example, would simply removing certain non-essential meetings from the employee's duties be just as effective as granting the employee 100% telework)?<sup>x</sup>

## Conclusion

Reasonable accommodations under the ADA can be tricky and often cause contention between employees and employers. Unfortunately, doctors frequently are thrust in the middle of this issue and are asked by patients to provide opinions or recommendations on reasonable accommodations. Doctors' opinions will likely have a profound effect on both the employee's ability to perform his or her job and the employer's business operations. By carefully analyzing each reasonable accommodation case under the unique facts and circumstances of the individual

patient's disability and job duties, doctors can help maintain the integrity of this important legal process and avoid unintended consequences.<sup>xi</sup>

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<sup>i</sup> 42 U.S.C. § 12112(b)(5).

<sup>ii</sup> 29 C.F.R. § 1630.2(i)(1)(i).

<sup>iii</sup> *Id.* at § 1630.2(i)(1)(ii).

<sup>iv</sup> 42 U.S.C. § 12111(9); 29 C.F.R. § 1630.2(o)(1)(i)-(iii).

<sup>v</sup> Linda Batiste, *Emotional Support Animals in the Workplace: A Practical Approach*, Job Accommodation Network, Vol. 12, Issue 04 ("there's nothing in the ADA or its regulations that addresses emotional support dogs as workplace accommodations. There is also nothing in written guidance from the Equal Employment Opportunity Commission (EEOC), the federal agency that enforces Title I"). See also generally 42 U.S.C. §§ 12101, et seq. and 29 C.F.R. § 1630.1, et seq.

<sup>vi</sup> *See Swanson v. Vill. Of Flossmoor*, 794 F.3d 820, 827 (7th Cir. 2015) ("even if 'light duty' would have been Swanson's preferred accommodation, the ADA does not entitle a disabled employee to the accommodation of his choice"); *Handverger v. City of Winooski*, 605 Fed. Appx. 68, 71 (2nd Cir. 2015) ("Employees are 'not entitled to hold out for the most beneficial accommodation' (citation omitted), or even their preferred accommodation (citation omitted)"); *Brudnak v. Port Auth. Of Allegheny Cty.*, 2012 U.S. Dist. LEXIS 129871, \*23 (Sep. 12, 2012) ("Simply because plaintiff did not receive what he requested ... that does not mean that the Port Authority's accommodation was not reasonable."), *citing EEOC v. Agro. Distrib., LLC*, 555 F.3d 462, 471 (5th Cir. 2009) ("Not all requested accommodations are appropriate, and the ADA only 'provides a right to a reasonable accommodation, not the employee's preferred accommodation.'").

<sup>vii</sup> Factors used in determining whether job functions are "essential" are set forth in 29 C.F.R. § 1630.2(n).

<sup>viii</sup> See JEFFREY J. LOREK, 'Job Restructuring' as a Reasonable Accommodation in Federal Employment, FedSmith.com (Aug. 25, 2016), available at <https://www.fedsmith.com/2016/08/25/job-restructuring-as-a-reasonable-accommodation-in-federal-employment/>.

<sup>ix</sup> EEOC, *The Mental Health Provider's Role in a Client's Request for a Reasonable Accommodation at Work*, available at [https://www.eeoc.gov/eeoc/publications/ada\\_mental\\_health\\_provider.cfm](https://www.eeoc.gov/eeoc/publications/ada_mental_health_provider.cfm).

<sup>x</sup> "If you are aware of an effective accommodation, you may suggest it. Do not overstate the need for a particular accommodation, in case an alternative is necessary." EEOC, *The Mental Health Provider's Role in a Client's Request for a Reasonable Accommodation at Work*, available at [https://www.eeoc.gov/eeoc/publications/ada\\_mental\\_health\\_provider.cfm](https://www.eeoc.gov/eeoc/publications/ada_mental_health_provider.cfm).

<sup>xi</sup> For ideas on alternative reasonable accommodations, see JEFFREY J. LOREK, *Accommodating Mentally Impaired Employees at Work: How to Alter Supervisory Methods as a Reasonable Accommodation Under the Americans with Disabilities Act*, Fed. Cir. Bar Ass'n Bench & Bar, Vol. 21, No. 9 (Sep. 2016), available at <https://www.wc.com/portalresource/lookup/poid/Z1tOI9NPluKPtDNIqLMRVPMQiLsSwGZCmW3!/document.name=/PUBLICATION%20-%20Federal%20Circuit%20Bar%20Association%20NewsLetter-%20September%202016.pdf>; MURRAY AND LOREK, *The Americans with Disabilities Act and Reasonable Accommodation: Does an Employer Have a Duty to Reassign Disabled Individuals Who Can No Longer Perform their Jobs?*, Corporate Counsel's. Guide to the Americans with Disabilities Act, Business Laws, Inc. (August/November 2005).