

The Legal Requirements of Providing Reasonable Accommodations

Presented by: Angela Butsch

What You Will Learn

- ▶ Concepts of a reasonable accommodation
- ▶ The process
- ▶ The circumstances under which it is required

Laws, Regulations, Directives and DOI Policy regarding Reasonable Accommodations

- ▶ Section 501 of the Rehabilitation Act of 1973, as amended
- ▶ 29 CFR Part 1614
- ▶ EEOC Management Directive 715
- ▶ 373 Department Manual 15

Who is a Person with a Disability

An individual with a disability is one who:

- ▶ Has physical or mental impairment that substantially limits one or more major life activities
- ▶ Has a record of, or
- ▶ Is regarded as having

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Major Life Activities

- ▶ Caring for Oneself
- ▶ Performing Manual Tasks
- ▶ Walking
- ▶ Sleeping
- ▶ Hearing
- ▶ Speaking
- ▶ Interacting with Others
- ▶ Breathing
- ▶ Concentrating
- ▶ Learning
- ▶ Working
- ▶ Sitting
- ▶ Standing
- ▶ Lifting
- ▶ Communicating

These are basic activities that the average person in the general population can perform with little or no difficulty.

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Who is a Qualified PWD?

- ▶ An individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position

And who

- ▶ with or without a reasonable accommodation can perform the essential functions of the position.

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What are Essential Duties?

- ▶ Does the job exist to perform this function?
- ▶ How much time per week is spent doing this function?
- ▶ What degree of expertise or skill is required to perform this function?
- ▶ Did the previous employee do this function?
- ▶ Would there be significant consequences if this function were not performed?

Essential duties are so fundamental to a position that they can not be reassigned to other employees as a reasonable accommodation.

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What is a Reasonable Accommodation?

A logical change or adjustment to a job or worksite that makes it possible for a qualified employees with a disability to perform the essential functions of their positions.

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The Service will provide reasonable accommodations to qualified disabled employees or applicants, unless the accommodation imposes an undue hardship.

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Undue Hardship

Factors to consider include:

- ▶ Overall size of the agency's program with respect to number of employees
- ▶ Type and number of facilities
- ▶ Size of the budget
- ▶ Type of agency operation including composition and structure of the agency's workforce
- ▶ Nature and cost of the accommodation

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Acting on the Request

- ▶ Requests may be made verbally or in writing
- ▶ If a request is approved and the accommodation type will be needed on a reoccurring basis, the individual does not have to resubmit another application or request each time that same accommodation is needed

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Assessing Reasonable Accommodations

- ▶ Case by Case Basis
- ▶ Accommodations must be work related
- ▶ Accommodations must be made to the known disability

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Examples of Reasonable Accommodations

- ▶ Making facilities accessible
- ▶ Modifying work schedules and policies
- ▶ Hiring Readers or Sign Language Interpreters
- ▶ Acquiring or modifying equipment or devices

- ▶ Reassignment is the accommodation of last choice.

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Confidentiality

- ▶ All requests and the processing of reasonable accommodation requests must be kept confidential

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Timelines

- ▶ Requests that are submitted to someone other than the employees manager or supervisor, must be delivered within 5 business days to the employees supervisor or manager

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Timelines

- Supervisors/Managers have 10 business days to issue a written decision to the employee

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Timelines

- After issuance of written decision to grant an accommodation, the accommodation shall be provided within 20 business days from the date the request was received (excluding extenuating circumstances)

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Medical Documentation

- If medical documentation is required by a deciding official, then a supervisor/manager will issue a written decision to the employee no later than 10 business days from the date the medical documentation is received

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Denials

- ▶ All denials of requests for reasonable accommodation(s) must be reviewed by the Division of Diversity and Civil Rights Regional Accessibility Coordinator, the EEO Manager, and the Regional Office of the Solicitor prior to issuing the denial

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Tracking and Reporting

- ▶ The deciding manager/supervisor must complete Appendix IV (Reasonable Accommodation Information Reporting Form) and submit it to the Division of Diversity and Civil Rights Regional Accessibility Coordinator within 10 business of the decision

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What Can DCR Do To Help You

- ▶ Provide guidance and forms
- ▶ Conduct intake interviews of requestors and conduct research to identify a variety of possible reasonable accommodations to suggest to employees and management

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What Can DCR Do To Help You

- ▶ Serve as the liaison between manufacturers, vendors, CAP, Vocational Rehabilitation, Non-Governmental Organizations, on behalf of the employee and management
- ▶ Conduct reasonable accommodations needs analysis or identify other needs analyses resources (i.e. Disability Access Consultants or State Vocational Rehabilitation)

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What Can DCR Do To Help - Cont.

- ▶ Confer with the Office of the Solicitor when legal issues arise
- ▶ Provide management with routine status updates during the reasonable accommodation process
- ▶ Provide reasonable accommodation and accessibility training upon request

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OTHER RESOURCES

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Job Accommodation Network (JAN) 800-526-7234

- ▶ Leading source of free, expert, and confidential guidance on workplace accommodations and disability employment issues.
- ▶ Consultants offer one-on-one guidance both over the phone and online.
- ▶ JAN's services benefit - private employers, government agencies, employee representatives, service providers, people with disabilities and their families.

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Computer/Electronic Accommodation Program (CAP) 703-681-8813

- ▶ MOU between DOI and DOD
- ▶ Web Address: www.tricare.mil/cap
- ▶ Complete a needs assessment
- ▶ Browse for assistive technology
- ▶ Submit an application

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National Center on Accessibility (NCA)

Services provided by the NCA include:

- ▶ Research
- ▶ Training
- ▶ Technical Assistance
- ▶ Consultation

Website: www.ncaonline.org

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U.S. Access Board

Independent Federal agency devoted to the accessibility for people with disabilities.

- ▶ Web Address: <http://www.access-board.gov/>

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Equal Employment Opportunity Commission (EEOC)

- ▶ The EEOC provides access to Federal employment laws and regulations.
- ▶ Publications are made available on the website on a variety of topics including the Americans with Disabilities Act which include their policy guidance on various portions of the Act, Fact Sheets, Q&As and best practices.

Website: www.eeoc.gov

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Disability and Business Technical Center (DBTAC)

- ▶ Leading resource on information concerning reasonable accommodations, architectural barriers, program accessibility, transportation, or any other ADA concern.
- ▶ Services are provided to businesses, Federal, state and local government, consumers, architects and contractors.
- ▶ Expert staff are available to provide training, publications and respond to your inquiries.

Hot Line: 1-800-949-4232
Website: www.adata.org
Podcast: www.DisabilityLawLowdown.com

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Questions and Answers

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Equipment and Furniture

Under what circumstance would it be appropriate for an employer to provide the use of a wheelchair or a mobility cart to an employee in the workplace?

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Scheduling

Does providing a change in work schedule constitute an undue hardship when some co-workers are inconvenienced by the change in work schedule?

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Job Restructuring

Is an employer required to create a new position as part of a reasonable accommodation?

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Telework

Under what circumstance may an employer deny a request to telecommute as an accommodation?

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Reassignment

May an employer offer to reassign an individual to a lower graded position as a reasonable accommodation?

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Questions/Assistance

- ▶ Dana Perez, Regional EEO and Diversity Program Manager - DCR at 503-231-2260 or at dana_perez@fws.gov
- ▶ Angela Butsch, Regional Accessibility Coordinator at 503-231-2260 or at angela_butsch@fws.gov

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