fatigue. This accommodation is reasonable because it is a common-sense solution to remove a workplace barrier being required to stand when the job can be effectively performed sitting down. This "reasonable" accommodation is effective because it addresses the employee's fatigue and enables her to perform her job.

Example C: A cleaning company rotates its staff to different floors on a monthly basis. One crew member has a psychiatric disability. While his mental illness does not affect his ability to perform the various cleaning functions, it does make it difficult to adjust to alterations in his daily routine. The employee has had significant difficulty adjusting to the monthly changes in floor assignments. He asks for a reasonable accommodation and proposes three options: staying on one floor permanently, staying on one floor for two months and then rotating, or allowing a transition period to adjust to a change in floor assignments. These accommodations are reasonable because they appear to be feasible solutions to this employee's problems dealing with changes to his routine. They also appear to be effective because they would enable him to perform his cleaning duties.

There are several modifications or adjustments that are not considered forms of reasonable accommodation.[12] An employer does not have to eliminate an essential function, i.e., a fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or without reasonable accommodation,[13] is not a "qualified" individual with a disability within the meaning of the ADA. Nor is an employer required to lower production standards -- whether qualitative or quantitative[14] -- that are applied uniformly to employees with and without disabilities. However, an employer may have to provide reasonable accommodation to enable an employee with a disability to meet the production standard. While an employer is not required to eliminate an essential function or lower a production standard, it may do so if it wishes.

An employer does not have to provide as reasonable accommodations personal use items needed in accomplishing daily activities both on and off the job. Thus, an employer is not required to provide an employee with a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed off the job. Furthermore, an employer is not required to provide personal use amenities, such as a hot pot or refrigerator, if those items are not provided to employees without disabilities. However, items that might otherwise be considered personal may be required as reasonable accommodations where they are specifically designed or required to meet job-related rather than personal needs.[15]

Undue Hardship

The only statutory limitation on an employer's obligation to provide "reasonable accommodation" is that no such change or modification is required if it would cause "undue hardship" to the employer.[16] "Undue hardship" means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.[17] An employer must assess on a case-by-case basis whether a particular reasonable accommodation would cause undue hardship. The ADA's "undue hardship" standard is different from that applied by courts under Title VII of the Civil Rights Act of 1964 for religious accommodation.[18]

REQUESTING REASONABLE ACCOMMODATION

1. How must an individual request a reasonable accommodation?

When an individual decides to request accommodation, the individual or his/her representative must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. To request accommodation, an individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation."[19]

Example A: An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation.

Example B: An employee tells his supervisor, "I need six weeks off to get treatment for a back problem." This is a request for a reasonable accommodation.

Example C: A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation.

Example D: An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting reasonable accommodation. He does not link his need for the new chair with a medical condition.

While an individual with a disability may request a change due to a medical condition, this request does not necessarily mean that the employer is required to provide the change. A request for reasonable accommodation is the first step in an informal, interactive process between the individual and the employer. In some instances, before addressing the merits of the accommodation request, the employer needs to determine if the individual's medical condition meets the ADA definition of "disability,"[20] a prerequisite for the individual to be entitled to a reasonable accommodation.

2. May someone other than the individual with a disability request a reasonable accommodation on behalf of the individual?

   Yes, a family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability.[21] Of course, the individual with a disability may refuse to accept an accommodation that is not needed.

   Example A: An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. This discussion constitutes a request for reasonable accommodation.

   Example B: An employee has been out of work for six months with a workers' compensation injury. The employee's doctor sends the employer a letter, stating that the employee is released to return to work, but with certain work restrictions. (Alternatively, the letter may state that the employee is released to return to a light duty position.) The letter constitutes a request for reasonable accommodation.

3. Do requests for reasonable accommodation need to be in writing?

   No. Requests for reasonable accommodation do not need to be in writing. Individuals may request accommodations in conversation or may use any other mode of communication.[22]An employer may choose to write a memorandum or letter confirming

the individual's request. Alternatively, an employer may ask the individual to fill out a form or submit the request in written form, but the employer cannot ignore the initial request. An employer also may request reasonable documentation that the individual has an ADA disability and needs a reasonable accommodation. (See Question 6).

4. When should an individual with a disability request a reasonable accommodation?

   An individual with a disability may request a reasonable accommodation at any time during the application process or during the period of employment. The ADA does not preclude an employee with a disability from requesting a reasonable accommodation because s/he did not ask for one when applying for a job or after receiving a job offer. Rather, an individual with a disability should request a reasonable accommodation when s/he knows that there is a workplace barrier that is preventing him/her, due to a disability, from effectively competing for a position, performing a job, or gaining equal access to a benefit of employment.[23] As a practical matter, it may be in an employee's interest to request a reasonable accommodation before performance suffers or conduct problems occur.

5. What must an employer do after receiving a request for reasonable accommodation?

   The employer and the individual with a disability should engage in an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation.[24] The employer may ask the individual relevant questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.[25]

   The exact nature of the dialogue will vary. In many instances, both the disability and the type of accommodation required will be obvious, and thus there may be little or no need to engage in any discussion. In other situations, the employer may need to ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation. While the individual with a disability does not have to be able to specify the precise accommodation, s/he does need to describe the problems posed by the workplace barrier. Additionally, suggestions from the individual with a disability may assist the employer in determining the type of reasonable accommodation to provide. Where the individual or the employer are not familiar with possible accommodations, there are extensive public and private resources to help the employer identify reasonable accommodations once the specific limitations and workplace barriers have been ascertained.[26]

6. May an employer ask an individual for documentation when the individual requests reasonable accommodation?

   Yes. When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his/her disability and functional limitations. [27] The employer is entitled to know that the individual has a covered disability for which s/he needs a reasonable accommodation.

   Reasonable documentation means that the employer may require only the documentation that is needed to establish that a person has an ADA disability, and that the disability necessitates a reasonable accommodation. Thus, an employer, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation. This means that in most situations an employer cannot request a person's complete medical records because they are likely to contain information unrelated to the disability at issue

and the need for accommodation. If an individual has more than one disability, an employer can request information pertaining only to the disability that requires a reasonable accommodation.

An employer may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of functional limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation, employers should specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. The individual can be asked to sign a limited release allowing the employer to submit a list of specific questions to the health care or vocational professional.[28]

As an alternative to requesting documentation, an employer may simply discuss with the person the nature of his/her disability and functional limitations. It would be useful for the employer to make clear to the individual why it is requesting information, i.e., to verify the existence of an ADA disability and the need for a reasonable accommodation.

Example A: An employee says to an employer, "I'm having trouble reaching tools because of my shoulder injury." The employer may ask the employee for documentation describing the impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities (i.e., the employer is seeking information as to whether the employee has an ADA disability).

Example B: A marketing employee has a severe learning disability. He attends numerous meetings to plan marketing strategies. In order to remember what is discussed at these meetings he must take detailed notes but, due to his disability, he has great difficulty writing. The employee tells his supervisor about his disability and requests a laptop computer to use in the meetings. Since neither the disability nor the need for accommodation are obvious, the supervisor may ask the employee for reasonable documentation about his impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities. The employer also may ask why the disability necessitates use of a laptop computer (or any other type of reasonable accommodation, such as a tape recorder) to help the employee retain the information from the meetings.[29]

Example C: An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. The supervisor can ask the spouse to send in documentation from the employee's treating physician that confirms that the hospitalization was related to the multiple sclerosis and provides information on how long an absence may be required from work.[30]

If an individual's disability or need for reasonable accommodation is not obvious, and s/he refuses to provide the reasonable documentation requested by the employer, then s/he is not entitled to reasonable accommodation.[31] On the other hand, failure by the employer to initiate or participate in an informal dialogue with the individual after

receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation.[32]

7. May an employer require an individual to go to a health care professional of the employer's (rather than the employee's) choice for purposes of documenting need for accommodation and disability?

   The ADA does not prevent an employer from requiring an individual to go to an appropriate health professional of the employer's choice if the individual provides insufficient information from his/her treating physician (or other health care professional) to substantiate that s/he has an ADA disability and needs a reasonable accommodation. However, if an individual provides insufficient documentation in response to the employer's initial request, the employer should explain why the documentation is insufficient and allow the individual an opportunity to provide the missing information in a timely manner. Documentation is insufficient if it does not specify the existence of an ADA disability and explain the need for reasonable accommodation.[33]

   Any medical examination conducted by the employer's health professional must be job-related and consistent with business necessity. This means that the examination must be limited to determining the existence of an ADA disability and the functional limitations that require reasonable accommodation.[34] If an employer requires an employee to go to a health professional of the employer's choice, the employer must pay all costs associated with the visit(s).

8. Are there situations in which an employer cannot ask for documentation in response to a request for reasonable accommodation?

   Yes. An employer cannot ask for documentation when: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the individual has already provided the employer with sufficient information to substantiate that s/he has an ADA disability and needs the reasonable accommodation requested.

   Example A: An employee brings a note from her treating physician explaining that she has diabetes and that, as a result, she must test her blood sugar several times a day to ensure that her insulin level is safe in order to avoid a hyperglycemic reaction. The note explains that a hyperglycemic reaction can include extreme thirst, heavy breathing, drowsiness, and flushed skin, and eventually would result in unconsciousness. Depending on the results of the blood test, the employee might have to take insulin. The note requests that the employee be allowed three or four 10-minute breaks each day to test her blood, and if necessary, to take insulin. The doctor's note constitutes sufficient documentation that the person has an ADA disability because it describes a substantially limiting impairment and the reasonable accommodation needed as a result. The employer cannot ask for additional documentation.

   Example B: One year ago, an employer learned that an employee had bipolar disorder after he requested a reasonable accommodation. The documentation provided at that time from the employee's psychiatrist indicated that this was a permanent condition which would always involve periods in which the disability would remit and then intensify. The psychiatrist's letter explained that during periods when the condition flared up, the person's manic moods or depressive episodes could be severe enough to create serious problems for the individual in caring for himself or working, and that medication controlled the frequency and severity of these episodes.

Now, one year later, the employee again requests a reasonable accommodation related to his bipolar disorder. Under these facts, the employer may ask for reasonable documentation on the need for the accommodation (if the need is not obvious), but it cannot ask for documentation that the person has an ADA disability. The medical information provided one year ago established the existence of a long-term impairment that substantially limits a major life activity.

Example C: An employee gives her employer a letter from her doctor, stating that the employee has asthma and needs the employer to provide her with an air filter. This letter contains insufficient information as to whether the asthma is an ADA disability because it does not provide any information as to its severity (i.e., whether it substantially limits a major life activity). Furthermore, the letter does not identify precisely what problem exists in the workplace that requires an air filter or any other reasonable accommodation. Therefore, the employer can request additional documentation.

9. Is an employer required to provide the reasonable accommodation that the individual wants?

The employer may choose among reasonable accommodations as long as the chosen accommodation is effective.[35] Thus, as part of the interactive process, the employer may offer alternative suggestions for reasonable accommodations and discuss their effectiveness in removing the workplace barrier that is impeding the individual with a disability.

If there are two possible reasonable accommodations, and one costs more or is more burdensome than the other, the employer may choose the less expensive or burdensome accommodation as long as it is effective (i.e., it would remove a workplace barrier, thereby providing the individual with an equal opportunity to apply for a position, to perform the essential functions of a position, or to gain equal access to a benefit or privilege of employment). Similarly, when there are two or more effective accommodations, the employer may choose the one that is easier to provide. In either situation, the employer does not have to show that it is an undue hardship to provide the more expensive or more difficult accommodation. If more than one accommodation is effective, "the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations."[36]

Example A: An employee with a severe learning disability has great difficulty reading. His supervisor sends him many detailed memoranda which he often has trouble understanding. However, he has no difficulty understanding oral communication. The employee requests that the employer install a computer with speech output and that his supervisor send all memoranda through electronic mail which the computer can then read to him. The supervisor asks whether a tape recorded message would accomplish the same objective and the employee agrees that it would. Since both accommodations are effective, the employer may choose to provide the supervisor and employee with a tape recorder so that the supervisor can record her memoranda and the employee can listen to them.

Example B: An attorney with a severe vision disability requests that her employer provide someone to read printed materials that she needs to review daily. The attorney explains that a reader enables her to review substantial amounts of written materials in an efficient manner. Believing that this reasonable accommodation would be too costly, the employer instead provides the attorney with a device that allows her to magnify print so that she can read it herself. The attorney can read print using this device, but with such

great difficulty it significantly slows down her ability to review written materials. The magnifying device is ineffective as a reasonable accommodation because it does not provide the attorney with an equal opportunity to attain the same level of performance as her colleagues. Without an equal opportunity to attain the same level of performance, this attorney is denied an equal opportunity to compete for promotions. In this instance, failure to provide the reader, absent undue hardship, would violate the ADA.

10. How quickly must an employer respond to a request for reasonable accommodation?

    An employer should respond expeditiously to a request for reasonable accommodation. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible.[37] Similarly, the employer should act promptly to provide the reasonable accommodation. Unnecessary delays can result in a violation of the ADA.[38]

    Example A: An employer provides parking for all employees. An employee who uses a wheelchair requests from his supervisor an accessible parking space, explaining that the spaces are so narrow that there is insufficient room for his van to extend the ramp that allows him to get in and out. The supervisor does not act on the request and does not forward it to someone with authority to respond. The employee makes a second request to the supervisor. Yet, two months after the initial request, nothing has been done. Although the supervisor never definitively denies the request, the lack of action under these circumstances amounts to a denial, and thus violates the ADA.

    Example B: An employee who is blind requests adaptive equipment for her computer as a reasonable accommodation. The employer must order this equipment and is informed that it will take three months to receive delivery. No other company sells the adaptive equipment the employee needs. The employer notifies the employee of the results of its investigation and that it has ordered the equipment. Although it will take three months to receive the equipment, the employer has moved as quickly as it can to obtain it and thus there is no ADA violation resulting from the delay. The employer and employee should determine what can be done so that the employee can perform his/her job as effectively as possible while waiting for the equipment.

11. May an employer require an individual with a disability to accept a reasonable accommodation that s/he does not want?

    No. An employer may not require a qualified individual with a disability to accept an accommodation. If, however, an employee needs a reasonable accommodation to perform an essential function or to eliminate a direct threat, and refuses to accept an effective accommodation, s/he may not be qualified to remain in the job.[39]

REASONABLE ACCOMMODATION AND JOB APPLICANTS

12. May an employer ask whether a reasonable accommodation is needed when an applicant has not asked for one?

    An employer may tell applicants what the hiring process involves (e.g., an interview, timed written test, or job demonstration), and may ask applicants whether they will need a reasonable accommodation for this process.

During the hiring process and before a conditional offer is made, an employer generally may not ask an applicant whether s/he needs a reasonable accommodation for the job, except when the employer knows that an applicant has a disability -- either because it is obvious or the applicant has voluntarily disclosed the information -- and could reasonably believe that the applicant will need a reasonable accommodation to perform specific job functions. If the applicant replies that s/he needs a reasonable accommodation, the employer may inquire as to what type. [40]

After a conditional offer of employment is extended, an employer may inquire whether applicants will need reasonable accommodations related to anything connected with the job (i.e., job performance or access to benefits/privileges of the job) as long as all entering employees in the same job category are asked this question. Alternatively, an employer may ask a specific applicant if s/he needs a reasonable accommodation if the employer knows that this applicant has a disability -- either because it is obvious or the applicant has voluntarily disclosed the information -- and could reasonably believe that the applicant will need a reasonable accommodation. If the applicant replies that s/he needs a reasonable accommodation, the employer may inquire as to what type.[41]

13. Does an employer have to provide a reasonable accommodation to an applicant with a disability even if it believes that it will be unable to provide this individual with a reasonable accommodation on the job?

Yes. An employer must provide a reasonable accommodation to a qualified applicant with a disability that will enable the individual to have an equal opportunity to participate in the application process and to be considered for a job (unless it can show undue hardship). Thus, individuals with disabilities who meet initial requirements to be considered for a job should not be excluded from the application process because the employer speculates, based on a request for reasonable accommodation for the application process, that it will be unable to provide the individual with reasonable accommodation to perform the job. In many instances, employers will be unable to determine whether an individual needs reasonable accommodation to perform a job based solely on a request for accommodation during the application process. And even if an individual will need reasonable accommodation to perform the job, it may not be the same type or degree of accommodation that is needed for the application process. Thus, an employer should assess the need for accommodations for the application process separately from those that may be needed to perform the job. [42]

Example A: An employer is impressed with an applicant's resume and contacts the individual to come in for an interview. The applicant, who is deaf, requests a sign language interpreter for the interview. The employer cancels the interview and refuses to consider further this applicant because it believes it would have to hire a full-time interpreter. The employer has violated the ADA. The employer should have proceeded with the interview, using a sign language interpreter (absent undue hardship), and at the interview inquired to what extent the individual would need a sign language interpreter to perform any essential functions requiring communication with other people.

Example B: An individual who has paraplegia applies for a secretarial position. Because the office has two steps at the entrance, the employer arranges for the applicant to take a typing test, a requirement of the application process, at a different location. The applicant fails the test. The employer does not have to provide any further reasonable accommodations for this individual because she is no longer qualified to continue with the application process.

REASONABLE ACCOMMODATION RELATED TO THE BENEFITS AND PRIVILEGES OF EMPLOYMENT [43]

The ADA requires employers to provide reasonable accommodations so that employees with disabilities can enjoy the "benefits and privileges of employment" equal to those enjoyed by similarly-situated employees without disabilities. Benefits and privileges of employment include, but are not limited to, employer-sponsored: (1) training, (2) services (e.g., employee assistance programs (EAP's), credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation), and (3) parties or other social functions (e.g., parties to celebrate retirements and birthdays, and company outings).[44] If an employee with a disability needs a reasonable accommodation in order to gain access to, and have an equal opportunity to participate in, these benefits and privileges, then the employer must provide the accommodation unless it can show undue hardship.

14. Does an employer have to provide reasonable accommodation to enable an employee with a disability to have equal access to information communicated in the workplace to non-disabled employees?

    Yes. Employers provide information to employees through different means, including computers, bulletin boards, mailboxes, posters, and public address systems. Employers must ensure that employees with disabilities have access to information that is provided to other similarly-situated employees without disabilities, regardless of whether they need it to perform their jobs.

    Example A: An employee who is blind has adaptive equipment for his computer that integrates him into the network with other employees, thus allowing communication via electronic mail and access to the computer bulletin board. When the employer installs upgraded computer equipment, it must provide new adaptive equipment in order for the employee to be integrated into the new networks, absent undue hardship. Alternative methods of communication (e.g., sending written or telephone messages to the employee instead of electronic mail) are likely to be ineffective substitutes since electronic mail is used by every employee and there is no effective way to ensure that each one will always use alternative measures to ensure that the blind employee receives the same information that is being transmitted via computer.

    Example B: An employer authorizes the Human Resources Director to use a public address system to remind employees about special meetings and to make certain announcements. In order to make this information accessible to a deaf employee, the Human Resources Director arranges to send in advance an electronic mail message to the deaf employee conveying the information that will be broadcast. The Human Resources Director is the only person who uses the public address system; therefore, the employer can ensure that all public address messages are sent, via electronic mail, to the deaf employee. Thus, the employer is providing this employee with equal access to office communications.

15. Must an employer provide reasonable accommodation so that an employee may attend training programs?

    Yes. Employers must provide reasonable accommodation (e.g., sign language interpreters; written materials produced in alternative formats, such as braille, large print, or on audio- cassette) that will provide employees with disabilities with an equal

opportunity to participate in employer-sponsored training, absent undue hardship. This obligation extends to in-house training, as well as to training provided by an outside entity. Similarly, the employer has an obligation to provide reasonable accommodation whether the training occurs on the employer's premises or elsewhere.

Example A: XYZ Corp. has signed a contract with Super Trainers, Inc., to provide mediation training at its facility to all of XYZ's Human Resources staff. One staff member is blind and requests that materials be provided in braille. Super Trainers refuses to provide the materials in braille. XYZ maintains that it is the responsibility of Super Trainers and sees no reason why it should have to arrange and pay for the braille copy.

Both XYZ (as an employer covered under Title I of the ADA) and Super Trainers (as a public accommodation covered under Title III of the ADA)[45] have obligations to provide materials in alternative formats. This fact, however, does not excuse either one from their respective obligations. If Super Trainers refuses to provide the braille version, despite its Title III obligations, XYZ still retains its obligation to provide it as a reasonable accommodation, absent undue hardship.

Employers arranging with an outside entity to provide training may wish to avoid such problems by specifying in the contract who has the responsibility to provide appropriate reasonable accommodations. Similarly, employers should ensure that any offsite training will be held in an accessible facility if they have an employee who, because of a disability, requires such an accommodation.

Example B: XYZ Corp. arranges for one of its employees to provide CPR training. This three-hour program is optional. A deaf employee wishes to take the training and requests a sign language interpreter. XYZ must provide the interpreter because the CPR training is a benefit that XYZ offers all employees, even though it is optional.

TYPES OF REASONABLE ACCOMMODATIONS RELATED TO JOB PERFORMANCE[46]

Below are discussed certain types of reasonable accommodations related to job performance.

Job Restructuring

Job restructuring includes modifications such as:

- reallocating or redistributing marginal job functions that an employee is unable to perform because of a disability; and
- altering when and/or how a function, essential or marginal, is performed.[47]

An employer never has to reallocate essential functions as a reasonable accommodation, but can do so if it wishes.

16. If, as a reasonable accommodation, an employer restructures an employee's job to eliminate some marginal functions, may the employer require the employee to take on other marginal functions that s/he can perform?

Yes. An employer may switch the marginal functions of two (or more) employees in order to restructure a job as a reasonable accommodation.

Example: A cleaning crew works in an office building. One member of the crew wears a prosthetic leg which enables him to walk very well, but climbing steps is painful and difficult. Although he can perform his essential functions without problems, he cannot perform the marginal function of sweeping the steps located throughout the building. The marginal functions of a second crew member include cleaning the small kitchen in the employee's lounge, which is something the first crew member can perform. The employer can switch the marginal functions performed by these two employees.

Leave

Permitting the use of accrued paid leave, or unpaid leave, is a form of reasonable accommodation when necessitated by an employee's disability.[48] An employer does not have to provide paid leave beyond that which is provided to similarly-situated employees. Employers should allow an employee with a disability to exhaust accrued paid leave first and then provide unpaid leave.[49] For example, if employees get 10 days of paid leave, and an employee with a disability needs 15 days of leave, the employer should allow the individual to use 10 days of paid leave and 5 days of unpaid leave.

An employee with a disability may need leave for a number of reasons related to the disability, including, but not limited to:

- obtaining medical treatment (e.g., surgery, psychotherapy, substance abuse treatment, or dialysis); rehabilitation services; or physical or occupational therapy;
- recuperating from an illness or an episodic manifestation of the disability;
- obtaining repairs on a wheelchair, accessible van, or prosthetic device;
- avoiding temporary adverse conditions in the work environment (for example, an air-conditioning breakdown causing unusually warm temperatures that could seriously harm an employee with multiple sclerosis);
- training a service animal (e.g., a guide dog); or
- receiving training in the use of braille or to learn sign language.

17. May an employer apply a "no-fault" leave policy, under which employees are automatically terminated after they have been on leave for a certain period of time, to an employee with a disability who needs leave beyond the set period?

    No. If an employee with a disability needs additional unpaid leave as a reasonable accommodation, the employer must modify its "no-fault" leave policy to provide the employee with the additional leave, unless it can show that: (1) there is another effective accommodation that would enable the person to perform the essential functions of his/her position, or (2) granting additional leave would cause an undue hardship. Modifying workplace policies, including leave policies, is a form of reasonable accommodation.[50]

18. Does an employer have to hold open an employee's job as a reasonable accommodation?

Yes. An employee with a disability who is granted leave as a reasonable accommodation is entitled to return to his/her same position unless the employer demonstrates that holding open the position would impose an undue hardship.[51]

If an employer cannot hold a position open during the entire leave period without incurring undue hardship, the employer must consider whether it has a vacant, equivalent position for which the employee is qualified and to which the employee can be reassigned to continue his/her leave for a specific period of time and then, at the conclusion of the leave, can be returned to this new position.[52]

Example: An employee needs eight months of leave for treatment and recuperation related to a disability. The employer grants the request, but after four months the employer determines that it can no longer hold open the position for the remaining four months without incurring undue hardship. The employer must consider whether it has a vacant, equivalent position to which the employee can be reassigned for the remaining four months of leave, at the end of which time the employee would return to work in that new position. If an equivalent position is not available, the employer must look for a vacant position at a lower level. Continued leave is not required as a reasonable accommodation if a vacant position at a lower level is also unavailable.

19. Can an employer penalize an employee for work missed during leave taken as a reasonable accommodation?

No. To do so would be retaliation for the employee's use of a reasonable accommodation to which s/he is entitled under the law.[53] Moreover, such punishment would make the leave an ineffective accommodation, thus making an employer liable for failing to provide a reasonable accommodation.[54]

Example A: A salesperson took five months of leave as a reasonable accommodation. The company compares the sales records of all salespeople over a one-year period, and any employee whose sales fall more than 25% below the median sales performance of all employees is automatically terminated. The employer terminates the salesperson because she had fallen below the required performance standard. The company did not consider that the reason for her lower sales performance was her five-month leave of absence; nor did it assess her productivity during the period she did work (i.e., prorate her productivity).

Penalizing the salesperson in this manner constitutes retaliation and a denial of reasonable accommodation.

Example B: Company X is having a reduction-in-force. The company decides that any employee who has missed more than four weeks in the past year will be terminated. An employee took five weeks of leave for treatment of his disability. The company cannot count those five weeks in determining whether to terminate this employee.[55]

20. When an employee requests leave as a reasonable accommodation, may an employer provide an accommodation that requires him/her to remain on the job instead?

Yes, if the employer's reasonable accommodation would be effective and eliminate the need for leave.[56] An employer need not provide an employee's preferred accommodation as long as the employer provides an effective accommodation.[57] Accordingly, in lieu of providing leave, an employer may provide a reasonable accommodation that requires an employee to remain on the job (e.g., reallocation of marginal functions or temporary transfer) as long as it does not interfere with the employee's ability to address his/her

medical needs. The employer is obligated, however, to restore the employee's full duties or to return the employee to his/her original position once s/he no longer needs the reasonable accommodation.

Example A: An employee with emphysema requests ten weeks of leave for surgery and recuperation related to his disability. In discussing this request with the employer, the employee states that he could return to work after seven weeks if, during his first three weeks back, he could work part-time and eliminate two marginal functions that require lots of walking. If the employer provides these accommodations, then it can require the employee to return to work after seven weeks.

Example B: An employee's disability is getting more severe and her doctor recommends surgery to counteract some of the effects. After receiving the employee's request for leave for the surgery, the employer proposes that it provide certain equipment which it believes will mitigate the effects of the disability and delay the need for leave to get surgery. The employer's proposed accommodation is not effective because it interferes with the employee's ability to get medical treatment.

21. How should an employer handle leave for an employee covered by both the ADA and the Family and Medical Leave Act (FMLA)?[58]

An employer should determine an employee's rights under each statute separately, and then consider whether the two statutes overlap regarding the appropriate actions to take.[59]

Under the ADA, an employee who needs leave related to his/her disability is entitled to such leave if there is no other effective accommodation and the leave will not cause undue hardship. An employer must allow the individual to use any accrued paid leave first, but, if that is insufficient to cover the entire period, then the employer should grant unpaid leave. An employer must continue an employee's health insurance benefits during his/her leave period only if it does so for other employees in a similar leave status. As for the employee's position, the ADA requires that the employer hold it open while the employee is on leave unless it can show that doing so causes undue hardship. When the employee is ready to return to work, the employer must allow the individual to return to the same position (assuming that there was no undue hardship in holding it open) if the employee is still qualified (i.e., the employee can perform the essential functions of the position with or without reasonable accommodation).

If it is an undue hardship under the ADA to hold open an employee's position during a period of leave, or an employee is no longer qualified to return to his/her original position, then the employer must reassign the employee (absent undue hardship) to a vacant position for which s/he is qualified.

Under the FMLA, an eligible employee is entitled to a maximum of 12 weeks of leave per 12 month period. The FMLA guarantees the right of the employee to return to the same position or to an equivalent one.[60] An employer must allow the individual to use any accrued paid leave first, but if that is insufficient to cover the entire period, then the employer should grant unpaid leave. The FMLA requires an employer to continue the employee's health insurance coverage during the leave period, provided the employee pays his/her share of the premiums.

Example A: An employee with an ADA disability needs 13 weeks of leave for treatment related to the disability. The employee is eligible under the FMLA for 12 weeks of leave (the maximum available), so this period of leave constitutes both FMLA leave and a

reasonable accommodation. Under the FMLA, the employer could deny the employee the thirteenth week of leave. But, because the employee is also covered under the ADA, the employer cannot deny the request for the thirteenth week of leave unless it can show undue hardship. The employer may consider the impact on its operations caused by the initial 12-week absence, along with other undue hardship factors.[61]

Example B: An employee with an ADA disability has taken 10 weeks of FMLA leave and is preparing to return to work. The employer wants to put her in an equivalent position rather than her original one. Although this is permissible under the FMLA, the ADA requires that the employer return the employee to her original position. Unless the employer can show that this would cause an undue hardship, or that the employee is no longer qualified for her original position (with or without reasonable accommodation), the employer must reinstate the employee to her original position.

Example C: An employee with an ADA disability has taken 12 weeks of FMLA leave. He notifies his employer that he is ready to return to work, but he no longer is able to perform the essential functions of his position or an equivalent position. Under the FMLA, the employer could terminate his employment,[62] but under the ADA the employer must consider whether the employee could perform the essential functions with reasonable accommodation (e.g., additional leave, part-time schedule, job restructuring, or use of specialized equipment). If not, the ADA requires the employer to reassign the employee if there is a vacant position available for which he is qualified, with or without reasonable accommodation, and there is no undue hardship.

Modified or Part-Time Schedule

22. Must an employer allow an employee with a disability to work a modified or part-time schedule as a reasonable accommodation, absent undue hardship?

Yes.[63] A modified schedule may involve adjusting arrival or departure times, providing periodic breaks, altering when certain functions are performed, allowing an employee to use accrued paid leave, or providing additional unpaid leave. An employer must provide a modified or part-time schedule when required as a reasonable accommodation, absent undue hardship, even if it does not provide such schedules for other employees.[64]

Example A: An employee with HIV infection must take medication on a strict schedule. The medication causes extreme nausea about one hour after ingestion, and generally lasts about 45 minutes. The employee asks that he be allowed to take a daily 45-minute break when the nausea occurs. The employer must grant this request absent undue hardship.

For certain positions, the time during which an essential function is performed may be critical. This could affect whether an employer can grant a request to modify an employee's schedule.[65] Employers should carefully assess whether modifying the hours could significantly disrupt their operations -- that is, cause undue hardship -- or whether the essential functions may be performed at different times with little or no impact on the operations or the ability of other employees to perform their jobs.

If modifying an employee's schedule poses an undue hardship, an employer must consider reassignment to a vacant position that would enable the employee to work during the hours requested. [66]

Example B: A day care worker requests that she be allowed to change her hours from 7:00 a.m. - 3:00 p.m. to 10:00 a.m. - 6:00 p.m. because of her disability. The day care center is open from 7:00 a.m. - 7:00 p.m. and it will still have sufficient coverage at the beginning of the morning if it grants the change in hours. In this situation, the employer must provide the reasonable accommodation.

Example C: An employee works for a morning newspaper, operating the printing presses which run between 10 p.m. and 3 a.m. Due to her disability, she needs to work in the daytime. The essential function of her position, operating the printing presses, requires that she work at night because the newspaper cannot be printed during the daytime hours. Since the employer cannot modify her hours, it must consider whether it can reassign her to a different position.

23. How should an employer handle requests for modified or part-time schedules for an employee covered by both the ADA and the Family and Medical Leave Act (FMLA)?[67]

An employer should determine an employee's rights under each statute separately, and then consider whether the two statutes overlap regarding the appropriate actions to take.

Under the ADA, an employee who needs a modified or part-time schedule because of his/her disability is entitled to such a schedule if there is no other effective accommodation and it will not cause undue hardship. If there is undue hardship, the employer must reassign the employee if there is a vacant position for which s/he is qualified and which would allow the employer to grant the modified or part-time schedule (absent undue hardship).[68] An employee receiving a part-time schedule as a reasonable accommodation is entitled only to the benefits, including health insurance, that other part-time employees receive. Thus, if non- disabled part-time workers are not provided with health insurance, then the employer does not have to provide such coverage to an employee with a disability who is given a part-time schedule as a reasonable accommodation.

Under the FMLA, an eligible employee is entitled to take leave intermittently or on a part-time basis, when medically necessary, until s/he has used up the equivalent of 12 workweeks in a 12- month period. When such leave is foreseeable based on planned medical treatment, an employer may require the employee to temporarily transfer (for the duration of the leave) to an available alternative position, with equivalent pay and benefits, for which the employee is qualified and which better suits his/her reduced hours.[69] An employer always must maintain the employee's existing level of coverage under a group health plan during the period of FMLA leave, provided the employee pays his/her share of the premium.[70]

Example: An employee with an ADA disability requests that she be excused from work one day a week for the next six months because of her disability. If this employee is eligible for a modified schedule under the FMLA, the employer must provide the requested leave under that statute if it is medically necessary, even if the leave would be an undue hardship under the ADA.

Modified Workplace Policies

24. Is it a reasonable accommodation to modify a workplace policy?

Yes. It is a reasonable accommodation to modify a workplace policy when necessitated by an individual's disability-related limitations,[71] absent undue hardship. But, reasonable accommodation only requires that the employer modify the policy for an employee who

requires such action because of a disability; therefore, the employer may continue to apply the policy to all other employees.

Example: An employer has a policy prohibiting employees from eating or drinking at their workstations. An employee with insulin-dependent diabetes explains to her employer that she may occasionally take too much insulin and, in order to avoid going into insulin shock, she must immediately eat a candy bar or drink fruit juice. The employee requests permission to keep such food at her workstation and to eat or drink when her insulin level necessitates. The employer must modify its policy to grant this request, absent undue hardship. Similarly, an employer might have to modify a policy to allow an employee with a disability to bring in a small refrigerator, or to use the employer's refrigerator, to store medication that must be taken during working hours.

Granting an employee time off from work or an adjusted work schedule as a reasonable accommodation may involve modifying leave or attendance procedures or policies. For example, it would be a reasonable accommodation to modify a policy requiring employees to schedule vacation time in advance if an otherwise qualified individual with a disability needed to use accrued vacation time on an unscheduled basis because of disability- related medical problems, barring undue hardship.[72] Furthermore, an employer may be required to provide additional leave to an employee with a disability as a reasonable accommodation in spite of a "no-fault" leave policy, unless the provision of such leave would impose an undue hardship.[73]

In some instances, an employer's refusal to modify a workplace policy, such as a leave or attendance policy, could constitute disparate treatment as well as a failure to provide a reasonable accommodation. For example, an employer may have a policy requiring employees to notify supervisors before 9:00 a.m. if they are unable to report to work. If an employer would excuse an employee from complying with this policy because of emergency hospitalization due to a car accident, then the employer must do the same thing when the emergency hospitalization is due to a disability.[74]

Reassignment [75]

The ADA specifically lists "reassignment to a vacant position" as a form of reasonable accommodation.[76] This type of reasonable accommodation must be provided to an employee who, because of a disability, can no longer perform the essential functions of his/her current position, with or without reasonable accommodation, unless the employer can show that it would be an undue hardship.[77]

An employee must be "qualified" for the new position. An employee is "qualified" for a position if s/he: (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the new position, with or without reasonable accommodation.[78] The employee does not need to be the best qualified individual for the position in order to obtain it as a reassignment.

There is no obligation for the employer to assist the individual to become qualified. Thus, the employer does not have to provide training so that the employee acquires necessary skills to take a job.[79] The employer, however, would have to provide an employee with a disability who is being reassigned with any training that is normally provided to anyone hired for or transferred to the position.

Example A: An employer is considering reassigning an employee with a disability to a position which requires the ability to speak Spanish in order to perform an essential function. The employee never learned Spanish and wants the employer to send him to a

course to learn Spanish. The employer is not required to provide this training as part of the obligation to make a reassignment. Therefore, the employee is not qualified for this position.

Example B: An employer is considering reassigning an employee with a disability to a position in which she will contract for goods and services. The employee is qualified for the position. The employer has its own specialized rules regarding contracting that necessitate training all individuals hired for these positions. In this situation, the employer must provide the employee with this specialized training.

Before considering reassignment as a reasonable accommodation, employers should first consider those accommodations that would enable an employee to remain in his/her current position. Reassignment is the reasonable accommodation of last resort and is required only after it has been determined that: (1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position, or (2) all other reasonable accommodations would impose an undue hardship.[80] However, if both the employer and the employee voluntarily agree that transfer is preferable to remaining in the current position with some form of reasonable accommodation, then the employer may transfer the employee.

"Vacant" means that the position is available when the employee asks for reasonable accommodation, or that the employer knows that it will become available within a reasonable amount of time. A "reasonable amount of time" should be determined on a case-by-case basis considering relevant facts, such as whether the employer, based on experience, can anticipate that an appropriate position will become vacant within a short period of time.[81] A position is considered vacant even if an employer has posted a notice or announcement seeking applications for that position. The employer does not have to bump an employee from a job in order to create a vacancy; nor does it have to create a new position.[82]

Example C: An employer is seeking a reassignment for an employee with a disability. There are no vacant positions today, but the employer has just learned that another employee resigned and that that position will become vacant in four weeks. The impending vacancy is equivalent to the position currently held by the employee with a disability. If the employee is qualified for that position, the employer must offer it to him.

Example D: An employer is seeking a reassignment for an employee with a disability. There are no vacant positions today, but the employer has just learned that an employee in an equivalent position plans to retire in six months. Although the employer knows that the employee with a disability is qualified for this position, the employer does not have to offer this position to her because six months is beyond a "reasonable amount of time." (If, six months from now, the employer decides to advertise the position, it must allow the individual to apply for that position and give the application the consideration it deserves.)

The employer must reassign the individual to a vacant position that is equivalent in terms of pay, status, or other relevant factors (e.g., benefits, geographical location) if the employee is qualified for the position. If there is no vacant equivalent position, the employer must reassign the employee to a vacant lower level position for which the individual is qualified. Assuming there is more than one vacancy for which the employee is qualified, the employer must place the individual in the position that comes closest to the employee's current position in terms of pay, status, etc.[83] If it is unclear which position comes closest, the employer should consult with the employee about his/her preference before determining the position to which the employee will be reassigned.

Reassignment does not include giving an employee a promotion. Thus, an employee must compete for any vacant position that would constitute a promotion.

25. Is a probationary employee entitled to reassignment?

Employers cannot deny a reassignment to an employee solely because s/he is designated as "probationary." An employee with a disability is eligible for reassignment to a new position, regardless of whether s/he is considered "probationary," as long as the employee adequately performed the essential functions of the position, with or without reasonable accommodation, before the need for a reassignment arose.

The longer the period of time in which an employee has adequately performed the essential functions, with or without reasonable accommodation, the more likely it is that reassignment is appropriate if the employee becomes unable to continue performing the essential functions of the current position due to a disability. If, however, the probationary employee has never adequately performed the essential functions, with or without reasonable accommodation, then s/he is not entitled to reassignment because s/he was never "qualified" for the original position. In this situation, the employee is similar to an applicant who applies for a job for which s/he is not qualified, and then requests reassignment. Applicants are not entitled to reassignment.

Example A: An employer designates all new employees as "probationary" for one year. An employee has been working successfully for nine months when she becomes disabled in a car accident. The employee, due to her disability, is unable to continue performing the essential functions of her current position, with or without reasonable accommodation, and seeks a reassignment. She is entitled to a reassignment if there is a vacant position for which she is qualified and it would not pose an undue hardship.

Example B: A probationary employee has been working two weeks, but has been unable to perform the essential functions of the job because of his disability. There are no reasonable accommodations that would permit the individual to perform the essential functions of the position, so the individual requests a reassignment. The employer does not have to provide a reassignment (even if there is a vacant position) because, as it turns out, the individual was never qualified -- i.e., the individual was never able to perform the essential functions of the position, with or without reasonable accommodation, for which he was hired.

26. Must an employer offer reassignment as a reasonable accommodation if it does not allow any of its employees to transfer from one position to another?

Yes. The ADA requires employers to provide reasonable accommodations to individuals with disabilities, including reassignment, even though they are not available to others. Therefore, an employer who does not normally transfer employees would still have to reassign an employee with a disability, unless it could show that the reassignment caused an undue hardship. And, if an employer has a policy prohibiting transfers, it would have to modify that policy in order to reassign an employee with a disability, unless it could show undue hardship.[84]

27. Is an employer's obligation to offer reassignment to a vacant position limited to those vacancies within an employee's office, branch, agency, department, facility, personnel system (if the employer has more than a single personnel system), or geographical area?

No. This is true even if the employer has a policy prohibiting transfers from one office, branch, agency, department, facility, personnel system, or geographical area to another.

The ADA contains no language limiting the obligation to reassign only to positions within an office, branch, agency, etc.[85] Rather, the extent to which an employer must search for a vacant position will be an issue of undue hardship.[86]If an employee is being reassigned to a different geographical area, the employee must pay for any relocation expenses unless the employer routinely pays such expenses when granting voluntary transfers to other employees.

28. Does an employer have to notify an employee with a disability about vacant positions, or is it the employee's responsibility to learn what jobs are vacant?

    The employer is in the best position to know which jobs are vacant or will become vacant within a reasonable period of time.[87] In order to narrow the search for potential vacancies, the employer, as part of the interactive process, should ask the employee about his/her qualifications and interests. Based on this information, the employer is obligated to inform an employee about vacant positions for which s/he may be eligible as a reassignment. However, an employee should assist the employer in identifying appropriate vacancies to the extent that the employee has access to information about them. If the employer does not know whether the employee is qualified for a specific position, the employer can discuss with the employee his/her qualifications.[88]

    An employer should proceed as expeditiously as possible in determining whether there are appropriate vacancies. The length of this process will vary depending on how quickly an employer can search for and identify whether an appropriate vacant position exists. For a very small employer, this process may take one day; for other employers this process may take several weeks.[89]When an employer has completed its search, identified whether there are any vacancies (including any positions that will become vacant in a reasonable amount of time), notified the employee of the results, and either offered an appropriate vacancy to the employee or informed him/her that no appropriate vacancies are available, the employer will have fulfilled its obligation.

29. Does reassignment mean that the employee is permitted to compete for a vacant position?

    No. Reassignment means that the employee gets the vacant position if s/he is qualified for it. Otherwise, reassignment would be of little value and would not be implemented as Congress intended.[90]

30. If an employee is reassigned to a lower level position, must an employer maintain his/her salary from the higher level position?

    No, unless the employer transfers employees without disabilities to lower level positions and maintains their original salaries.[91]

31. Must an employer provide a reassignment if it would violate a seniority system?

    Generally, it will be "unreasonable" to reassign an employee with a disability if doing so would violate the rules of a seniority system.[92] This is true both for collectively bargained seniority systems and those unilaterally imposed by management. Seniority systems governing job placement give employees expectations of consistent, uniform treatment expectations that would be undermined if employers had to make the type of individualized, case-by-case assessment required by the reasonable accommodation process.[93]

However, if there are "special circumstances" that "undermine the employees' expectations of consistent, uniform treatment," it may be a "reasonable accommodation," absent undue hardship, to reassign an employee despite the existence of a seniority system. For example, "special circumstances" may exist where an employer retains the right to alter the seniority system unilaterally, and has exercised that right fairly frequently, thereby lowering employee expectations in the seniority system.[(94)] In this circumstance, one more exception (i.e., providing the reassignment to an employee with a disability) may not make a difference.[(95)] Alternatively, a seniority system may contain exceptions, such that one more exception is unlikely to matter.[(96)] Another possibility is that a seniority system might contain procedures for making exceptions, thus suggesting to employees that seniority does not automatically guarantee access to a specific job.

OTHER REASONABLE ACCOMMODATION ISSUES
[(97)]

32. If an employer has provided one reasonable accommodation, does it have to provide additional reasonable accommodations requested by an individual with a disability?

    The duty to provide reasonable accommodation is an ongoing one.[(98)] Certain individuals require only one reasonable accommodation, while others may need more than one. Still others may need one reasonable accommodation for a period of time, and then at a later date, require another type of reasonable accommodation. If an individual requests multiple reasonable accommodations, s/he is entitled only to those accommodations that are necessitated by a disability and that will provide an equal employment opportunity.

    An employer must consider each request for reasonable accommodation and determine: (1) whether the accommodation is needed, (2) if needed, whether the accommodation would be effective, and (3) if effective, whether providing the reasonable accommodation would impose an undue hardship. If a reasonable accommodation turns out to be ineffective and the employee with a disability remains unable to perform an essential function, the employer must consider whether there would be an alternative reasonable accommodation that would not pose an undue hardship. If there is no alternative accommodation, then the employer must attempt to reassign the employee to a vacant position for which s/he is qualified, unless to do so would cause an undue hardship.

33. Does an employer have to change a person's supervisor as a form of reasonable accommodation?

    No. An employer does not have to provide an employee with a new supervisor as a reasonable accommodation. Nothing in the ADA, however, prohibits an employer from doing so. Furthermore, although an employer is not required to change supervisors, the ADA may require that supervisory methods be altered as a form of reasonable accommodation.[(99)] Also, an employee with a disability is protected from disability-based discrimination by a supervisor, including disability-based harassment.

    Example: A supervisor frequently schedules team meetings on a day's notice often notifying staff in the afternoon that a meeting will be held on the following morning. An employee with a disability has missed several meetings because they have conflicted with previously-scheduled physical therapy sessions. The employee asks that the supervisor give her two to three days' notice of team meetings so that, if necessary, she can reschedule the physical therapy sessions. Assuming no undue hardship would result, the supervisor must make this reasonable accommodation.

34. Does an employer have to allow an employee with a disability to work at home as a reasonable accommodation?

    An employer must modify its policy concerning where work is performed if such a change is needed as a reasonable accommodation, but only if this accommodation would be effective and would not cause an undue hardship.[100] Whether this accommodation is effective will depend on whether the essential functions of the position can be performed at home. There are certain jobs in which the essential functions can only be performed at the work site -- e.g., food server, cashier in a store. For such jobs, allowing an employee to work at home is not effective because it does not enable an employee to perform his/her essential functions. Certain considerations may be critical in determining whether a job can be effectively performed at home, including (but not limited to) the employer's ability to adequately supervise the employee and the employee's need to work with certain equipment or tools that cannot be replicated at home. In contrast, employees may be able to perform the essential functions of certain types of jobs at home (e.g., telemarketer, proofreader).[101] For these types of jobs, an employer may deny a request to work at home if it can show that another accommodation would be effective or if working at home will cause undue hardship.

35. Must an employer withhold discipline or termination of an employee who, because of a disability, violated a conduct rule that is job-related for the position in question and consistent with business necessity?

    No. An employer never has to excuse a violation of a uniformly applied conduct rule that is job-related and consistent with business necessity. This means, for example, that an employer never has to tolerate or excuse violence, threats of violence, stealing, or destruction of property. An employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on an employee without a disability.

36. Must an employer provide a reasonable accommodation for an employee with a disability who violated a conduct rule that is job- related for the position in question and consistent with business necessity?

    An employer must make reasonable accommodation to enable an otherwise qualified employee with a disability to meet such a conduct standard in the future, barring undue hardship, except where the punishment for the violation is termination.[102] Since reasonable accommodation is always prospective, an employer is not required to excuse past misconduct even if it is the result of the individual's disability.[103] Possible reasonable accommodations could include adjustments to starting times, specified breaks, and leave if these accommodations will enable an employee to comply with conduct rules.[104]

    Example: An employee with major depression is often late for work because of medication side-effects that make him extremely groggy in the morning. His scheduled hours are 9:00 a.m. to 5:30 p.m., but he arrives at 9:00, 9:30, 10:00, or even 10:30 on any given day. His job responsibilities involve telephone contact with the company's traveling sales representatives, who depend on him to answer urgent marketing questions and expedite special orders. The employer disciplines him for tardiness, stating that continued failure to arrive promptly during the next month will result in termination of his employment. The individual then explains that he was late because of a disability and needs to work on a later schedule. In this situation, the employer may discipline the employee because he violated a conduct standard addressing tardiness that is job-related for the position in question and consistent with business necessity. The employer,

however, must consider reasonable accommodation, barring undue hardship, to enable this individual to meet this standard in the future. For example, if this individual can serve the company's sales representatives by regularly working a schedule of 10:00 a.m. to 6:30 p.m., a reasonable accommodation would be to modify his schedule so that he is not required to report for work until 10:00 a.m.

37. Is it a reasonable accommodation to make sure that an employee takes medication as prescribed?

    No. Medication monitoring is not a reasonable accommodation. Employers have no obligation to monitor medication because doing so does not remove a workplace barrier. Similarly, an employer has no responsibility to monitor an employee's medical treatment or ensure that s/he is receiving appropriate treatment because such treatment does not involve modifying workplace barriers.[105]

    It may be a form of reasonable accommodation, however, to give an employee a break in order that s/he may take medication, or to grant leave so that an employee may obtain treatment.

38. Is an employer relieved of its obligation to provide reasonable accommodation for an employee with a disability who fails to take medication, to obtain medical treatment, or to use an assistive device (such as a hearing aid)?

    No. The ADA requires an employer to provide reasonable accommodation to remove workplace barriers, regardless of what effect medication, other medical treatment, or assistive devices may have on an employee's ability to perform the job.[106]

    However, if an employee with a disability, with or without reasonable accommodation, cannot perform the essential functions of the position or poses a direct threat in the absence of medication, treatment, or an assistive device, then s/he is unqualified.

39. Must an employer provide a reasonable accommodation that is needed because of the side effects of medication or treatment related to the disability, or because of symptoms or other medical conditions resulting from the underlying disability?

    Yes. The side effects caused by the medication that an employee must take because of the disability are limitations resulting from the disability. Reasonable accommodation extends to all limitations resulting from a disability.

    Example A: An employee with cancer undergoes chemotherapy twice a week, which causes her to be quite ill afterwards. The employee requests a modified schedule -- leave for the two days a week of chemotherapy. The treatment will last six weeks. Unless it can show undue hardship, the employer must grant this request.

    Similarly, any symptoms or related medical conditions resulting from the disability that cause limitations may also require reasonable accommodation.[107]

    Example B: An employee, as a result of insulin-dependent diabetes, has developed background retinopathy (a vision impairment). The employee, who already has provided documentation showing his diabetes is a disability, requests a device to enlarge the text on his computer screen. The employer can request documentation that the retinopathy is related to the diabetes but the employee does not have to show that the retinopathy is an independent disability under the ADA. Since the retinopathy is a consequence of the

diabetes (an ADA disability), the request must be granted unless undue hardship can be shown.

40. Must an employer ask whether a reasonable accommodation is needed when an employee has not asked for one?

    Generally, no. As a general rule, the individual with a disability -- who has the most knowledge about the need for reasonable accommodation -- must inform the employer that an accommodation is needed.[108]

    However, an employer should initiate the reasonable accommodation interactive process[109] without being asked if the employer: (1) knows that the employee has a disability, (2) knows, or has reason to know, that the employee is experiencing workplace problems because of the disability, and (3) knows, or has reason to know, that the disability prevents the employee from requesting a reasonable accommodation. If the individual with a disability states that s/he does not need a reasonable accommodation, the employer will have fulfilled its obligation.

    Example: An employee with mental retardation delivers messages at a law firm. He frequently mixes up messages for "R. Miller" and "T. Miller." The employer knows about the disability, suspects that the performance problem is a result of the disability, and knows that this employee is unable to ask for a reasonable accommodation because of his mental retardation. The employer asks the employee about mixing up the two names and asks if it would be helpful to spell the first name of each person. When the employee says that would be better, the employer, as a reasonable accommodation, instructs the receptionist to write the full first name when messages are left for one of the Messrs. Miller.

41. May an employer ask whether a reasonable accommodation is needed when an employee with a disability has not asked for one?

    An employer may ask an employee with a known disability whether s/he needs a reasonable accommodation when it reasonably believes that the employee may need an accommodation. For example, an employer could ask a deaf employee who is being sent on a business trip if s/he needs reasonable accommodation. Or, if an employer is scheduling a luncheon at a restaurant and is uncertain about what questions it should ask to ensure that the restaurant is accessible for an employee who uses a wheelchair, the employer may first ask the employee. An employer also may ask an employee with a disability who is having performance or conduct problems if s/he needs reasonable accommodation.[110]

42. May an employer tell other employees that an individual is receiving a reasonable accommodation when employees ask questions about a coworker with a disability?

    No. An employer may not disclose that an employee is receiving a reasonable accommodation because this usually amounts to a disclosure that the individual has a disability. The ADA specifically prohibits the disclosure of medical information except in certain limited situations, which do not include disclosure to coworkers.[111]

    An employer may certainly respond to a question from an employee about why a coworker is receiving what is perceived as "different" or "special" treatment by emphasizing its policy of assisting any employee who encounters difficulties in the workplace. The employer also may find it helpful to point out that many of the workplace issues encountered by employees are personal, and that, in these circumstances, it is the

employer's policy to respect employee privacy. An employer may be able to make this point effectively by reassuring the employee asking the question that his/her privacy would similarly be respected if s/he found it necessary to ask the employer for some kind of workplace change for personal reasons.

Since responding to specific coworker questions may be difficult, employers might find it helpful before such questions are raised to provide all employees with information about various laws that require employers to meet certain employee needs (e.g., the ADA and the Family and Medical Leave Act), while also requiring them to protect the privacy of employees. In providing general ADA information to employees, an employer may wish to highlight the obligation to provide reasonable accommodation, including the interactive process and different types of reasonable accommodations, and the statute's confidentiality protections. Such information could be delivered in orientation materials, employee handbooks, notices accompanying paystubs, and posted flyers. Employers may wish to explore these and other alternatives with unions because they too are bound by the ADA's confidentiality provisions. Union meetings and bulletin boards may be further avenues for such educational efforts.

As long as there is no coercion by an employer, an employee with a disability may voluntarily choose to disclose to coworkers his/her disability and/or the fact that s/he is receiving a reasonable accommodation.

UNDUE HARDSHIP ISSUES (112)

An employer does not have to provide a reasonable accommodation that would cause an "undue hardship" to the employer. Generalized conclusions will not suffice to support a claim of undue hardship. Instead, undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.(113) A determination of undue hardship should be based on several factors, including:

- the nature and cost of the accommodation needed;
- the overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility;
- the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
- the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer;
- the impact of the accommodation on the operation of the facility.(114)

The ADA's legislative history indicates that Congress wanted employers to consider all possible sources of outside funding when assessing whether a particular accommodation would be too costly.(115) Undue hardship is determined based on the net cost to the employer. Thus, an employer should determine whether funding is available from an outside source, such as a state rehabilitation agency, to pay for all or part of the accommodation.(116) In addition, the employer should determine whether it is eligible for certain tax credits or deductions to offset the cost of the accommodation. Also, to the

extent that a portion of the cost of an accommodation causes undue hardship, the employer should ask the individual with a disability if s/he will pay the difference.

If an employer determines that one particular reasonable accommodation will cause undue hardship, but a second type of reasonable accommodation will be effective and will not cause an undue hardship, then the employer must provide the second accommodation.

An employer cannot claim undue hardship based on employees' (or customers') fears or prejudices toward the individual's disability.[117] Nor can undue hardship be based on the fact that provision of a reasonable accommodation might have a negative impact on the morale of other employees. Employers, however, may be able to show undue hardship where provision of a reasonable accommodation would be unduly disruptive to other employees's ability to work.

Example A: An employee with breast cancer is undergoing chemotherapy. As a consequence of the treatment, the employee is subject to fatigue and finds it difficult to keep up with her regular workload. So that she may focus her reduced energy on performing her essential functions, the employer transfers three of her marginal functions to another employee for the duration of the chemotherapy treatments. The second employee is unhappy at being given extra assignments, but the employer determines that the employee can absorb the new assignments with little effect on his ability to perform his own assignments in a timely manner. Since the employer cannot show significant disruption to its operation, there is no undue hardship.[118]

Example B: A convenience store clerk with multiple sclerosis requests that he be allowed to go from working full-time to part- time as a reasonable accommodation because of his disability. The store assigns two clerks per shift, and if the first clerk's hours are reduced, the second clerk's workload will increase significantly beyond his ability to handle his responsibilities. The store determines that such an arrangement will result in inadequate coverage to serve customers in a timely manner, keep the shelves stocked, and maintain store security. Thus, the employer can show undue hardship based on the significant disruption to its operations and, therefore, can refuse to reduce the employee's hours. The employer, however, should explore whether any other reasonable accommodation will assist the store clerk without causing undue hardship.

43. Must an employer modify the work hours of an employee with a disability if doing so would prevent other employees from performing their jobs?

No. If the result of modifying one employee's work hours (or granting leave) is to prevent other employees from doing their jobs, then the significant disruption to the operations of the employer constitutes an undue hardship.

Example A: A crane operator, due to his disability, requests an adjustment in his work schedule so that he starts work at 8:00 a.m. rather than 7:00 a.m., and finishes one hour later in the evening. The crane operator works with three other employees who cannot perform their jobs without the crane operator. As a result, if the employer grants this requested accommodation, it would have to require the other three workers to adjust their hours, find other work for them to do from 7:00 to 8:00, or have the workers do nothing. The ADA does not require the employer to take any of these actions because they all significantly disrupt the operations of the business. Thus, the employer can deny the requested accommodation, but should discuss with the employee if there are other possible accommodations that would not result in undue hardship.

Example B: A computer programmer works with a group of people to develop new software. There are certain tasks that the entire group must perform together, but each person also has individual assignments. It is through habit, not necessity, that they have often worked together first thing in the morning.

The programmer, due to her disability, requests an adjustment in her work schedule so that she works from 10:00 a.m. - 7:00 p.m. rather than 9:00 a.m. - 6:00 p.m. In this situation, the employer could grant the adjustment in hours because it would not significantly disrupt the operations of the business. The effect of the reasonable accommodation would be to alter when the group worked together and when they performed their individual assignments.

44. Can an employer deny a request for leave when an employee cannot provide a fixed date of return?

Providing leave to an employee who is unable to provide a fixed date of return is a form of reasonable accommodation. However, if an employer is able to show that the lack of a fixed return date causes an undue hardship, then it can deny the leave. In certain circumstances, undue hardship will derive from the disruption to the operations of the entity that occurs because the employer can neither plan for the employee's return nor permanently fill the position. If an employee cannot provide a fixed date of return, and an employer determines that it can grant such leave at that time without causing undue hardship, the employer has the right to require, as part of the interactive process, that the employee provide periodic updates on his/her condition and possible date of return. After receiving these updates, employers may reevaluate whether continued leave constitutes an undue hardship.

In certain situations, an employee may be able to provide only an approximate date of return.[119] Treatment and recuperation do not always permit exact timetables. Thus, an employer cannot claim undue hardship solely because an employee can provide only an approximate date of return. In such situations, or in situations in which a return date must be postponed because of unforeseen medical developments, employees should stay in regular communication with their employers to inform them of their progress and discuss, if necessary, the need for continued leave beyond what might have been granted originally.[120]

Example A: An experienced chef at a top restaurant requests leave for treatment of her disability but cannot provide a fixed date of return. The restaurant can show that this request constitutes undue hardship because of the difficulty of replacing, even temporarily, a chef of this caliber. Moreover, it leaves the employer unable to determine how long it must hold open the position or to plan for the chef's absence. Therefore, the restaurant can deny the request for leave as a reasonable accommodation.

Example B: An employee requests eight weeks of leave for surgery for his disability. The employer grants the request. During surgery, serious complications arise that require a lengthier period of recuperation than originally anticipated, as well as additional surgery. The employee contacts the employer after three weeks of leave to ask for an additional ten to fourteen weeks of leave (i.e., a total of 18 to 22 weeks of leave). The employer must assess whether granting additional leave causes an undue hardship.

45. Does a cost-benefit analysis determine whether a reasonable accommodation will cause undue hardship?

No. A cost-benefit analysis assesses the cost of a reasonable accommodation in relation to the perceived benefit to the employer and the employee. Neither the statute nor the legislative history supports a cost-benefit analysis to determine whether a specific accommodation causes an undue hardship.[121] Whether the cost of a reasonable accommodation imposes an undue hardship depends on the employer's resources, not on the individual's salary, position, or status (e.g., full-time versus part-time, salary versus hourly wage, permanent versus temporary).

46. Can an employer claim undue hardship solely because a reasonable accommodation would require it to make changes to property owned by someone else?

No, an employer cannot claim undue hardship solely because a reasonable accommodation would require it to make changes to property owned by someone else. In some situations, an employer will have the right under a lease or other contractual relationship with the property owner to make the type of changes that are needed. If this is the case, the employer should make the changes, assuming no other factors exist that would make the changes too difficult or costly. If the contractual relationship between the employer and property owner requires the owner's consent to the kinds of changes that are required, or prohibits them from being made, then the employer must make good faith efforts either to obtain the owner's permission or to negotiate an exception to the terms of the contract. If the owner refuses to allow the employer to make the modifications, the employer may claim undue hardship. Even in this situation, however, the employer must still provide another reasonable accommodation, if one exists, that would not cause undue hardship.

Example A: X Corp., a travel agency, leases space in a building owned by Z Co. One of X Corp.'s employees becomes disabled and needs to use a wheelchair. The employee requests as a reasonable accommodation that several room dividers be moved to make his work space easily accessible. X Corp.'s lease specifically allows it to make these kinds of physical changes, and they are otherwise easy and inexpensive to make. The fact that X Corp. does not own the property does not create an undue hardship and therefore it must make the requested accommodation.

Example B: Same as Example A, except that X Corp.'s lease requires it to seek Z Co.'s permission before making any physical changes that would involve reconfiguring office space. X Corp. requests that Z Co. allow it to make the changes, but Z Co. denies the request. X Corp. can claim that making the physical changes would constitute an undue hardship. However, it must provide any other type of reasonable accommodation that would not involve making physical changes to the facility, such as finding a different location within the office that would be accessible to the employee.

An employer should remember its obligation to make reasonable accommodation when it is negotiating contracts with property owners.[122] Similarly, a property owner should carefully assess a request from an employer to make physical changes that are needed as a reasonable accommodation because failure to permit the modification might constitute "interference" with the rights of an employee with a disability.[123] In addition, other ADA provisions may require the property owner to make the modifications.[124]

BURDENS OF PROOF

In US Airways, Inc. v. Barnett, 535 U.S., 122 S. Ct. 1516 (2002), the Supreme Court laid out the burdens of proof for an individual with a disability (plaintiff) and an employer (defendant) in an ADA lawsuit alleging failure to provide reasonable accommodation. The "plaintiff/employee (to

defeat a defendant/employer's motion for summary judgment) need only show that an 'accommodation' seems reasonable on its face, i.e., ordinarily or in the run of cases."[125] Once the plaintiff has shown that the accommodation s/he needs is "reasonable," the burden shifts to the defendant/employer to provide case-specific evidence proving that reasonable accommodation would cause an undue hardship in the particular circumstances.[126]

The Supreme Court's burden-shifting framework does not affect the interactive process triggered by an individual's request for accommodation.[127] An employer should still engage in this informal dialogue to obtain relevant information needed to make an informed decision.

INSTRUCTIONS FOR INVESTIGATORS

When assessing whether a Respondent has violated the ADA by denying a reasonable accommodation to a Charging Party, investigators should consider the following:

\

- Is the Charging Party "otherwise qualified" (i.e., is the Charging Party qualified for the job except that, because of disability, s/he needs a reasonable accommodation to perform the position's essential functions)?
- Did the Charging Party, or a representative, request a reasonable accommodation (i.e., did the Charging Party let the employer know that s/he needed an adjustment or change at work for a reason related to a medical condition)? [see Questions 1-4]
    - Did the Respondent request documentation of the Charging Party's disability and/or functional limitations? If yes, was the documentation provided? Did the Respondent have a legitimate reason for requesting documentation? [see Questions 6-8]
    - What specific type of reasonable accommodation, if any, did the Charging Party request?
    - Was there a nexus between the reasonable accommodation requested and the functional limitations resulting from the Charging Party's disability? [see Question 6]
    - Was the need for reasonable accommodation related to the use of medication, side effects from treatment, or symptoms related to a disability? [see Questions 36-38]
- For what purpose did the Charging Party request a reasonable accommodation:
    - for the application process? [see Questions 12-13]
    - in connection with aspects of job performance? [see Questions 16-24, 32-33]
    - in order to enjoy the benefits and privileges of employment? [see Questions 14-15]
- Should the Respondent have initiated the interactive process, or provided a reasonable accommodation, even if the Charging Party did not ask for an accommodation? [see Questions 11, 39]
- What did the Respondent do in response to the Charging Party's request for reasonable accommodation (i.e., did the Respondent engage in an interactive process with the

Charging Party and if so, describe both the Respondent's and the Charging Party's actions/statements during this process)? [see Questions 5-11]

- If the Charging Party asked the Respondent for a particular reasonable accommodation, and the Respondent provided a different accommodation, why did the Respondent provide a different reasonable accommodation than the one requested by the Charging Party? Why does the Respondent believe that the reasonable accommodation it provided was effective in eliminating the workplace barrier at issue, thus providing the Charging Party with an equal employment opportunity? Why does the Charging Party believe that the reasonable accommodation provided by the Respondent was ineffective? [see Question 9]
- What type of accommodation could the Respondent have provided that would have been "reasonable" and effective in eliminating the workplace barrier at issue, thus providing the Charging Party with an equal employment opportunity?
- Does the charge involve allegations concerning reasonable accommodation and violations of any conduct rules? [see Questions 34-35]
- If the Charging Party alleges that the Respondent failed to provide a reassignment as a reasonable accommodation [see generally Questions 25-30 and accompanying text]:
    - did the Respondent and the Charging Party first discuss other forms of reasonable accommodation that would enable the Charging Party to remain in his/her current position before discussing reassignment?
    - did the Respondent have any vacant positions? [see Question 27]
    - did the Respondent notify the Charging Party about possible vacant positions? [see Question 28]
    - was the Charging Party qualified for a vacant position?
    - if there was more than one vacant position, did the Respondent place the Charging Party in the one that was most closely equivalent to the Charging Party's original position?
    - if the reassignment would conflict with a seniority system, are there "special circumstances" that would make it "reasonable" to reassign the Charging Party? [see Question 31]
- If the Respondent is claiming undue hardship [see generally Questions 42-46 and accompanying text]:
    - what evidence has the Respondent produced showing that providing a specific reasonable accommodation would entail significant difficulty or expense?
    - if a modified schedule or leave is the reasonable accommodation, is undue hardship based on the impact on the ability of other employees to do their jobs? [see Question 42]
    - if leave is the reasonable accommodation, is undue hardship based on the amount of leave requested? [see Question 43]
    - if there are "special circumstances" that would make it "reasonable" to reassign the Charging Party, despite the apparent conflict with a seniority system, would it nonetheless be an undue hardship to make the reassignment? [see Question 31]

- is undue hardship based on the fact that providing the reasonable accommodation requires changes to property owned by an entity other than the Respondent? [see Question 46]
- if the Respondent claims that a particular reasonable accommodation would result in undue hardship, is there another reasonable accommodation that Respondent could have provided that would not have resulted in undue hardship?

- Based on the evidence obtained in answers to the questions above, is the Charging Party a qualified individual with a disability (i.e., can the Charging Party perform the essential functions of the position with or without reasonable accommodation)?

APPENDIX
RESOURCES FOR LOCATING REASONABLE ACCOMMODATIONS

U.S. Equal Employment Opportunity Commission
1-800-669-3362 (Voice)
1-800-800-3302 (TT)

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. . 12101 et seq. (1994), and the regulations, 29 C.F.R. . 1630 (1997). In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The two main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. .. 1630.2(o), (p), 1630.9 (1997) , and (2) A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act III, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992). The Manual includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidances and documents: (1) Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995); (2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997); and (4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996).

Finally, the EEOC has a poster that employers and labor unions may use to fulfill the ADA's posting requirement.

All of the above-listed documents, with the exception of the ADA Technical Assistance Manual and Resource Directory and the poster, are also available through the Internet at http://www.eeoc.gov.

U.S. Department of Labor
(To obtain information on the Family and Medical Leave Act)
To request written materials:
1-800-959-3652 (Voice)

1-800-326-2577 (TT)
To ask questions: (202) 219-8412 (Voice)

Internal Revenue Service
(For information on tax credits and deductions for providing certain reasonable accommodations)

(202) 622-6060 (Voice)

Job Accommodation Network (JAN)
1-800-232-9675 (Voice/TT)
http://janweb.icdi.wvu.edu/.

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

ADA Disability and Business Technical Assistance Centers (DBTACs) 1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf
(301) 608-0050 (Voice/TT)

The Registry offers information on locating and using interpreters and transliteration services.

RESNA Technical Assistance Project
(703) 524-6686 (Voice)
(703) 524-6639 (TT)
http://www.resna.org/hometa1.htm

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

- information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products),
- centers where individuals can try out devices and equipment,
- assistance in obtaining funding for and repairing devices, and
- equipment exchange and recycling programs.

http://www.eeoc.gov/eeoc/internal/reasonable_accommodation.cfm

I. EEOC Policy on Reasonable Accommodation

Executive Order 13164 requires all Federal Agencies to establish procedures on handling requests for reasonable accommodation. These Procedures replace those issued in February 2001.

EEOC's Procedures fully comply with the requirements of the Rehabilitation Act of 1973. Under the law, EEOC must provide reasonable accommodation to qualified employees or applicants with disabilities,[1] unless to do so would cause undue hardship. The EEOC is committed to providing reasonable accommodations to its employees and applicants for employment to ensure that individuals with disabilities enjoy equal access to all employment opportunities. EEOC provides reasonable accommodations:

- when an applicant with a disability needs an accommodation to have an equal opportunity to compete for a job;
- when an employee with a disability needs an accommodation to perform the essential functions of the job or to gain access to the workplace; and
- when an employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g., details, trainings, office-sponsored events).

A reasonable accommodation is any change in the workplace or the way things are customarily done that provides an equal employment opportunity to an individual with a disability. While there are some things that are not considered reasonable accommodations (e.g., removal of an essential job function or personal use items such as a hearing aid that is needed on and off the job), reasonable accommodations can cover most things that enable an individual to apply for a job, perform a job, or have equal access to the workplace and employee benefits such as kitchens, parking lots, and office events.

Common types of accommodations include:

- modifying work schedules or supervisory methods
- granting breaks or providing leave
- altering how or when job duties are performed

- removing and/or substituting a marginal function
- moving to different office space
- providing telework beyond that provided by the collective bargaining agreement or the relevant MOU.
- making changes in workplace policies
- providing assistive technology, including information technology and communications equipment or specially designed furniture
- providing a reader or other staff assistant to enable employees to perform their job functions, where the accommodation cannot be provided by current staff (See Appendix E for information on hiring staff assistants.)
- removing an architectural barrier, including reconfiguring work spaces
- providing accessible parking
- providing materials in alternative formats (e.g., Braille, large print)
- providing a reassignment to another job.

EEOC will process requests for reasonable accommodation and will provide reasonable accommodations where appropriate, in a prompt and efficient manner in accordance with the time frames set forth in these Procedures.

EEOC has designated a **Disability Program Manager (DPM)** to oversee the reasonable accommodation program agency-wide.[2] All requests for reasonable accommodation will be handled by the DPM. If a request is given to a manager or supervisor rather than directly to the DPM, that individual should forward the request immediately and must do so within 2 business days. When an employee makes a request for reasonable accommodation that involves performance of the job, the DPM will work with the employee's supervisor to ensure that an appropriate accommodation is provided that meets the individual's disability-related needs and enables the individual to perform the essential functions of the position. **See Section II.K. on how to contact the DPM.**

As part of the reasonable accommodation interactive process, the DPM will obtain and evaluate documentation supporting an accommodation request (such as medical documentation demonstrating that the requestor is an individual with a disability), whenever the disability or need for accommodation is not obvious.

Sometimes EEOC may be able to address an employee's impairment-related needs outside the reasonable accommodation process. For example, EEOC has an ergonomic program available to all employees who may require special equipment to address or prevent various ailments. Under the ergonomic program, for instance, an employee with carpal tunnel syndrome may request a specialized chair or wrist pad. Requests under these procedures, as well as requests under the ergonomic program, should be directed to the DPM.

While the DPM will handle all requests for reasonable accommodations, supervisors, managers, and office directors often will need to be consulted about specific requests. Therefore, all management personnel must be familiar with these Procedures and the Commission's "Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act" (rev. Oct. 17, 2002), which contains significant information on the responsibilities of agency personnel involved in responding to a request for reasonable accommodation, as well as the rights and responsibilities of those requesting accommodation. (This document is available at http://www.eeoc.gov/policy/docs/accommodation.html, and on EEOC's intranet site, http://insite.eeoc.gov/insite/Enforcement/Compliance_Manual_and_Enforcem/rabarnett_1.pdf.). Applicants and employees may wish to consult this Guidance to better understand the reasonable accommodation process.

EEOC *may* take steps, solely at the agency's discretion, beyond those required by section 501 of the Rehabilitation Act of 1973.

II. Reasonable Accommodation Procedures

A. Requesting Reasonable Accommodation

Generally, an applicant or employee must let the EEOC know that he needs an adjustment or change concerning some aspect of the application process, the job, or a benefit of employment for a reason related to a medical condition.[3] An **applicant or employee** may request a reasonable accommodation at any time, **orally or in writing**. An individual should request a reasonable accommodation from the Disability Program Manager (DPM).[4] For applicants, information about contacting the DPM will be in the vacancy announcement and the letter of appointment. (See also Section II.K. on how to contact the DPM.)

If an employee makes a reasonable accommodation request to someone other than the DPM, such as her supervisor, office director, district director, or regional attorney, these supervisors/managers should forward the request to the DPM immediately and must do so within 2 business days. **The reasonable accommodation**

process begins as soon as the oral or written request for accommodation is made to any manager in an employee's chain of command, so it is imperative that the request be forwarded to the DPM within 2 business days.

An individual's receipt or denial of an accommodation does not prevent the individual from making another request at a later time if circumstances change and she believes that an accommodation is needed due to limitations from a disability (e.g., the disability worsens or an employee is assigned new duties that require an additional or different reasonable accommodation). Additionally, the DPM may not refuse to process a request for reasonable accommodation, and a reasonable accommodation may not be denied, based on a belief that the accommodation should have been requested earlier (e.g., during the application process).

A request does not have to include any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." A request is any communication in which an individual asks or states that she needs EEOC to provide or to change something because of a medical condition. A supervisor, manager, or the DPM should ask an individual whether she is requesting a reasonable accommodation if the nature of the initial communication is unclear.

A **family member, health professional, or other representative** may request an accommodation on behalf of an EEOC employee or applicant. For example, a doctor's note outlining medical restrictions for an employee constitutes a request for reasonable accommodation.

When an individual (or third party) makes an **oral request**, the DPM must ensure that the **"Confirmation of Request" form** is filled out (see Appendix A). The DPM must fill out the Form if the requestor does not.

An employee needing a reasonable accommodation on a recurring basis, such as the assistance of a sign language interpreter, must submit the "Confirmation" form only for the first request. However, the employee requesting accommodation must give appropriate advance notice each subsequent time the accommodation is needed. If the accommodation is needed on a regular basis (e.g., a weekly staff meeting), the DPM should ensure that an employee's supervisor makes the appropriate arrangements without requiring a request in advance of each occasion. (See Appendix D for information on requesting sign language interpreters.)

B. Processing the Request

The Disability Program Manager (DPM) is responsible for processing requests for reasonable accommodation. The Director of Human Resources will designate another OHR staff member to act as a back-up for the DPM to process requests when the DPM is unavailable for any length of time (e.g., the DPM is on vacation or out on extended leave).

While the DPM has responsibility for processing requests for reasonable accommodation, the DPM may work closely with an employee's supervisor or office director in responding to the request, particularly those involving performance of the job. The DPM will need to consult with an employee's supervisor and/or office director to gather relevant information necessary to respond to a request and to assess whether a particular accommodation will be effective. No reasonable accommodation involving performance of the job will be provided without first informing an employee's supervisor or, as appropriate, an office director.

C. The Interactive Process

1. Generally

After a request for accommodation has been made, the next step is for the parties to begin the interactive process to determine what, if any, accommodation should be provided. This means that the individual requesting the accommodation and the DPM must communicate with each other about the request, the precise nature of the problem that is generating the request, how a disability is prompting a need for an accommodation, and alternative accommodations that may be effective in meeting an individual's needs.

The DPM will contact the applicant or employee within 10 business days after the request is made (even if the request is initially made to someone else) to begin discussing the accommodation request. In some instances, the DPM may need to get information to determine if an individual's impairment is a "disability" under the Rehabilitation Act or to determine what would be an effective accommodation. Such information may not be necessary if an effective accommodation is obvious, if the disability is obvious (e.g., the requestor is blind or has paraplegia) or if the disability is already known to the EEOC (e.g., the requestor previously asked for an accommodation and information submitted at that time showed a disability existed and that there would be no change in the individual's medical condition).

Communication is a priority throughout the entire process, but particularly where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different forms of reasonable accommodation. Both the individual making the request and the decision maker should work together to identify effective accommodations. Appendix F lists some suggested resources for identifying accommodations.

When a third party (e.g., an individual's doctor) requests accommodation on behalf of an applicant or employee, the DPM should, if possible, confirm with the applicant or employee that he wants a reasonable accommodation before proceeding. Where this is not possible, for example, because the employee has been hospitalized in an acute condition, the DPM will process the third party's request if it seems appropriate (e.g.,

by granting immediate leave) and will consult directly with the individual needing the accommodation as soon as practicable.

The DPM may need to consult with other EEOC personnel (e.g., an employee's supervisor, Information Technology staff) or outside sources to obtain information necessary to make a determination about the request. **The EEOC expects that all agency personnel will give a high priority to responding quickly to a DPM's request for information or assistance. Any delays by EEOC personnel may result in the agency's failing to meet the required time frame.**

2. Reassignment

There are specific considerations in the interactive process when an employee needs, or may need, a reassignment.

- Generally, reassignment will only be considered if no accommodations are available to enable the individual to perform the essential functions of his or her current job, or if the only effective accommodation would cause undue hardship.

- In considering whether there are positions available for reassignment, the DPM will work with both the Office of Human Resources (OHR) and the employee requesting the reassignment to identify: (1) vacant positions within the agency for which the employee may be qualified, with or without reasonable accommodation; and (2) positions which OHR has reason to believe will become vacant within **60 days** from the date the search is initiated and for which the employee may be qualified.

    - ***EXAMPLE***

    If a search begins on May 1, then the DPM will inquire about any positions that are currently vacant or will become vacant between May 1 and June 30. The DPM does not have to hold open the search until July 1; if she finishes her search on May 15 and learns that no vacancies are currently available or anticipated by June 30, then the search is over and the results should be conveyed to the employee.

- Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, EEOC will not pay for the employee's relocation costs.

D. Requests for Medical Information

If a requestor's disability and/or need for accommodation are not obvious or already known, EEOC (specifically the DPM) is entitled to ask for and receive medical information showing that the requestor has a covered disability that requires accommodation. A disability is obvious or already known when it is clearly visible or the individual previously provided medical information showing that the condition met the Rehabilitation Act definition. It is the responsibility of the applicant/employee to provide appropriate medical information requested by EEOC where the disability and/or need for accommodation are not obvious or already known.

Only the DPM may determine whether medical information is needed and, if so, may request such information from the requestor and/or the appropriate health professional. Even if medical information is needed to process a request, the DPM does not necessarily have to request medical documentation from a health care provider; in many instances the requestor may be able to provide sufficient information that can substantiate the existence of a "disability" and/or need for a reasonable accommodation. (See Section II.E. about the confidentiality of all medical information obtained in processing a request for accommodation.) If an individual has already submitted medical documentation in connection with a previous request for accommodation, the individual should immediately inform the DPM of this fact. The DPM will then determine whether additional medical information is needed to process the current request.

If the initial information provided by the health professional or volunteered by the requestor is insufficient to enable the DPM to determine whether the individual has a "disability" and/or that an accommodation is needed, the DPM will explain what additional information is needed. If necessary, the individual should then ask his/her health care provider or other appropriate professional to provide the missing information. The DPM may also give the individual a list of questions to give to the health care provider or other appropriate professional to answer. If sufficient medical information is not provided by the individual after several attempts, the DPM may ask the individual requesting accommodation to sign a limited release permitting the DPM to contact the provider for additional information. The DPM may have the medical information reviewed by a doctor of the agency's choosing, at the agency's expense.

In determining whether documentation is necessary to support a request for reasonable accommodation and whether an applicant or employee has a disability within the meaning of the Rehabilitation Act, the DPM will be guided by principles set forth in the ADA Amendments Act of 2008. Specifically, the ADA Amendments Act directs that the definition of "disability" be construed broadly and that the determination of whether an individual has a "disability" generally should not require extensive analysis. Notwithstanding, the DPM may require medical information in order to design an appropriate and effective accommodation.

A supervisor or office director who believes that an employee may no longer need a reasonable accommodation should contact the DPM. The DPM will decide if there is a reason to contact the employee to discuss whether s/he has a continuing need for reasonable accommodation.

E. Confidentiality Requirements

Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means that all medical information that EEOC obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. This includes the fact that an accommodation has been requested or approved and information about functional limitations. It also means that any EEOC employee who obtains or receives such information is strictly bound by these confidentiality requirements.

The DPM may share certain information with an employee's supervisor or other agency official(s) as necessary to make appropriate determinations on a reasonable accommodation request. Under these circumstances, the DPM will inform the recipients about these confidentiality requirements. The information disclosed will be no more than is necessary to process the request. In certain situations, the DPM will not necessarily need to reveal the name of the requestor and/or the office in which the requestor works, or even the name of the disability.

EXAMPLE

The Office of Information Technology (OIT) generally will be consulted in connection with requests for assistive technology for computers. While OIT needs to know the employee's functional limitations, it typically has no need to know the employee's specific disability.

In addition to disclosures of information needed to process a request for accommodation, other disclosures of medical information are permitted as follows:

- supervisors and managers are entitled to whatever information is necessary to implement restrictions on the work or duties of the employee or to provide a reasonable accommodation;
- first aid and safety personnel may be informed, when appropriate, *if* the disability might require emergency treatment or assistance in evacuation; and
- government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act.

F. Time Frame for Processing Requests and Providing Reasonable Accommodations

1 Generally

The time frame for processing a request (including providing accommodation, if approved) is as soon as possible but no later than **30 business days from the date the request is made**. This 30-day period includes the 10-day time frame in which the DPM must contact the requestor after a request for reasonable accommodation is made. (See Section II.C.1.)

EEOC will process requests and, where appropriate, provide accommodations in as short a period as reasonably possible. The time frame above indicates the maximum amount of time it should generally take to process a request and provide a reasonable accommodation. The DPM will strive to process the request and provide an accommodation sooner, if possible. Unnecessary delays can result in a violation of the Rehabilitation Act.

The time frame begins when an oral or written request for reasonable accommodation is made, and not necessarily when it is received by the DPM.[5] **Therefore, everyone involved in processing a request should respond as quickly as possible.** This includes referring a request to the DPM, contacting a doctor if medical information or documentation is needed, and providing technical assistance to the DPM regarding issues raised by a request (e.g., information from a supervisor regarding the essential functions of an employee's position, information from OIT regarding compatibility of certain adaptive equipment with EEOC's technology).

If the DPM must request medical information or documentation from a requestor's doctor, the time frame will stop on the day that the DPM makes a request to the individual to obtain medical information or sends out a request for information/documentation, and will resume on the day that the information/documentation is received by the DPM.

If the disability is obvious or already known to the DPM, if it is clear why reasonable accommodation is needed, and if an accommodation can be provided quickly, then the DPM should not require the full 30 business days to process the request. The following are examples of situations where the disability is obvious or already known and an accommodation can be provided in less than the allotted time frame:

- An employee with insulin-dependent diabetes who sits in an open area asks for three breaks a day to test her blood sugar levels in private.

- An employee with clinical depression who takes medication which makes it hard for her to get up in time to get to the office at 9:00 a.m., requests that she be allowed to start work at 10:00 a.m. and still work an eight and a half hour day.

- A supervisor distributes a detailed agenda at the beginning of each staff meeting. An employee with a serious learning disability asks that the agenda be distributed ahead of time because his disability makes it difficult to read quickly and he needs more time to prepare.

2. Expedited Processing of a Request

In certain circumstances, a request for reasonable accommodation requires an expedited review and decision. This includes where a reasonable accommodation is needed:

- **to enable an applicant to apply for a job**. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation to ensure that an applicant with a disability has an equal opportunity to apply for a job.

- **to enable an employee to attend a meeting scheduled to occur soon**. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in 5 days.

3. Extenuating Circumstances

These are circumstances that **could not reasonably have been anticipated or avoided in advance** of the request for accommodation, **or that are beyond EEOC's ability to control**. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. Extensions will be limited to circumstances where they are absolutely necessary and only for as long as required to deal with the extenuating circumstance.

G. Resolution of the Reasonable Accommodation Request

All decisions regarding a request for reasonable accommodation will be communicated to an applicant or employee by use of the "Resolution of Request" form (see Appendix B), as well as orally.

1. If EEOC **grants a request for accommodation,** the DPM will give the "Resolution of Request" form to the requestor, and discuss implementation of the accommodation. The "Resolution" form must be filled out even if EEOC is granting the request without determining whether the requestor has a "disability" and

regardless of what type of change or modification is approved (e.g., EEOC grants a three-month removal of an essential function, which is not a form of reasonable accommodation but nonetheless must be specified on the Resolution form).

- A decision to provide an accommodation other than the one specifically requested will be considered a decision to grant an accommodation. The form will explain both the reasons for the denial of the individual's specific requested accommodation and why EEOC believes that the chosen accommodation will be effective.

- If the request is approved but the accommodation cannot be provided immediately, the DPM will inform the individual in writing of the projected time frame for providing the accommodation.

2. If EEOC **denies a request for accommodation,** the DPM will give the "Resolution" form to the requestor and discuss the reason(s) for the denial. When completing the "Resolution" form, the explanation for the denial will clearly state the specific reason(s) for the denial. This means that EEOC cannot simply state that a requested accommodation is denied because of "undue hardship" or because it would be "ineffective." Rather, the form will state and the DPM will explain specifically **why** the accommodation would result in undue hardship or why it would be ineffective.

   - If there is a legitimate reason to deny the specific reasonable accommodation requested (e.g., the accommodation poses an undue hardship or is not required by the Rehabilitation Act), the DPM will explore with the individual whether another accommodation would be possible. The fact that one accommodation proves ineffective or would cause undue hardship does not necessarily mean that this would be true of another accommodation. Similarly, if an employee requests removal of an essential function or some other action that is not required by law, the DPM will explore whether there is a reasonable accommodation that will meet the employee's needs.

   - If the DPM offers an accommodation other than the one requested, but the alternative accommodation is not accepted, the DPM will record the individual's rejection of the alternative accommodation on the "Resolution" form.

H. Informal Dispute Resolution

An individual dissatisfied with the resolution of a reasonable accommodation request can ask the Director of the Office of Human Resources (OHR) to reconsider that decision. An individual must request reconsideration

within **10 business days** of receiving the "Resolution" form. A request for reconsideration will not extend the time limits for initiating administrative, statutory, or collective bargaining claims. (See Section II.J. below.)

I. Information Tracking and Reporting

In order for EEOC to ensure compliance with these Procedures and the Rehabilitation Act, the DPM will complete the "Reasonable Accommodation Information Reporting" form (Appendix C) **within 5 business days** of issuing the decision.

These forms will be the basis of an annual report to be issued to all employees that will provide a qualitative assessment of EEOC's reasonable accommodation program, including any recommendations for improvement of EEOC's reasonable accommodation policies and these Procedures. This annual report **will not contain confidential information about specific requests for reasonable accommodations, such as the names of individuals that requested accommodations or the accommodations requested by specific individuals.** Rather, this report will provide only general information, such as the total number of requests for accommodations, the types of accommodations requested, and the length of time taken to process requests.

J. Relation of Procedures to Statutory and Collective Bargaining Claims

These Procedures do not limit or supplant statutory and collective bargaining protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. **Requirements governing the initiation of statutory and collective bargaining claims remain unchanged, including the time frames for filing such claims.**

The "Resolution of Request" form (Appendix B) provides information to individuals denied accommodation, or denied the accommodation of their choice, about their right to file an EEO complaint and their possible right to pursue MSPB and/or union grievance procedures.

An individual who chooses to pursue statutory or collective bargaining remedies for denial of reasonable accommodation **must:**

- For an EEO complaint: contact an EEO counselor in the Office of Equal Opportunity (OEO) within 45 days from the date of receipt of the written resolution notice or a verbal response to the request (whichever comes first). The 45-day filing period may not be applicable where there is an unreasonable delay in making a decision regarding an accommodation and the applicant or employee files a challenge before the decision is made.

- For a collective bargaining claim: file a written grievance in accordance with the provisions of the Collective Bargaining Agreement.

- For adverse actions over which the Merits Systems Protection Board has jurisdiction: initiate an appeal to the MSPB within 30 days of the appealable adverse action as defined in 5 C.F.R. Â§ 1201.3.

These Procedures create no new enforceable rights under section 501 of the Rehabilitation Act, any other law, or the collective bargaining agreement. Executive Order 13164, which requires all Federal agencies to adopt reasonable accommodation procedures, explains in section 5(b) that the procedures are "intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, [or] its agencies."

K. INQUIRIES AND DISTRIBUTION

Any employee wanting further information concerning these Procedures may contact the Disability Program Manager (DPM) via e-mail at DisabilityProgramManager. Applicants may contact the DPM at DisabilityProgramManager@eeoc.gov.

These Procedures shall be distributed to all employees upon issuance, and annually thereafter. They also will be posted on EEOC's Intranet and Internet sites, included in the employee handbook, and will be available in EEOC's library, in the Office of Equal Opportunity, and the Office of Human Resources Management. They will be distributed to all new employees as part of their orientation on their first day of work. These Procedures will be provided in alternative formats when requested from the DPM by, or on behalf of, any EEOC employee.

/signed/

Legal Clinic for the Disabled
215.587.3350 | 1513 Race Street | Philadelphia, PA 19102

Search...

Mission Statement

The Legal Clinic for the Disabled (LCD) provides free high-quality legal services to low-income people with physical disabilities and to the deaf and hard of hearing in Philadelphia, Bucks, Chester, Delaware and Montgomery Counties. Since 1990, LCD, a 501(c)(3) non-profit corporation with offices at Magee Rehabilitation Hospital, has helped thousands of Pennsylvanians with disabilities.

At LCD, we provide a variety of legal services. As part of our work, we assist victims of domestic violence with getting legal protection from their abusers. We represent victims of identity theft and consumer fraud. We help parents and caregivers access healthcare for their children. We write wills, powers of attorney and living wills. Most of the clients we serve experience physical limitations in their daily activities, and many have suffered catastrophic injuries or illnesses like stroke, spinal cord or brain injury, multiple sclerosis, cancer, advanced diabetes, glaucoma, AIDS, amputation or epilepsy. Our services help them overcome legal problems and continue living safely and independently in the community.

1513 Race Street | Philadelphia, PA 19102 | 215.587.3350 PHONE | 215.587.3166 FAX

*TS-00903-11-LCD

What is a CIL?

Liberty Resources is one of over 400 independent living centers nationwide. All centers are consumer controlled; that is, a majority of the governing Board and staff are people with disabilities. Centers for Independent Living must provide assistance without regard to disability type and respond to the unique needs of people with disabilities within their communities. Like all Centers for Independent Living, Liberty Resources enables persons with disabilities to live self-sufficiently in a manner of their own choosing by providing individuals with a menu of services. Core services which must be offered by each center are:

- Individual and Systems Advocacy
- Information and Referral
- Independent Living Skills Training
- Peer Support

Established in 1980, Liberty Resources was one of the first Centers for Independent Living in Pennsylvania.

BOARD OF DIRECTORS

Liberty Resources, Inc. is governed by a Board of Directors. The Board was established in 1982 when Liberty Resources, Inc. became an independent and self-governing entity. The Board is controlled by Persons with Disabilities and is responsible for establishing plans, policies, and goals for the Center. The Chief Executive Officer is directly accountable to the Board and, on its behalf, the Executive Committee of the Board. The Board meets periodically at Liberty Resources and staff will be notified of the time and date of such meetings. All Board meetings are open to the public unless a matter requiring confidentiality is being considered.

Click here if you would like to fill out a nomination form for Liberty Resources Board of Directors.

Four Core Services

ADVOCACY

The roots of all Independent Living Centers lie within the Disability Rights Movement of the 1970s - a movement initiated to enable individuals with disabilities to have the same life choices as non-disabled persons. Liberty Resources maintains a commitment to work to continually advocate for the rights of individuals with disabilities. Activities focus on individual, as well as systems change advocacy.

- **Consumer Advocacy Group**
  Known as Consumer Connection, group consists of

individuals, as well as a coalition of Liberty's Consumers, who devote their time to advocate on behalf of all Consumers around key issues such as Personal Assistance Services, housing, health care, and transportation.

- **ALFIE**
  The Alliance For Inclusive Education (ALFIE) is comprised of current and former disabled students of the Philadelphia School District, parents, and other interested disability rights advocates and organizations. ALFIE's mission is to promote inclusion of all students in education in Philadelphia and eventually, statewide.
- **Advocacy Committee**
  The Advocacy Committee is a standing committee of the Board of Directors of Liberty Resources. Its composition includes Board, staff, Consumers, and community members. Its charge is to determine and prioritize the advocacy agenda for the CIL.
- **Collaboration with DIA**
  Disabled in Action (DIA) is the Philadelphia chapter of the national grassroots advocacy group known as ADAPT. Liberty works closely wit DIA in support of local, statewide, and national advocacy efforts. These efforts include legislative days, rallies, protests, marches, and non-violent demonstrations.

INFORMATION & REFERRAL

This service provides Consumers, families, and professionals with information about disability issues and programs, facilitating linkage through referrals to needed services within Liberty Resources or from another resource. Click here to see the answers to some commonly asked questions.

PEER SUPPORT

- Peer Support Services offer a Consumer the opportunity to work with one individual or within a group. A Consumer may be paired with another person with a disability who has life experiences to share and to mentor the less-experienced Consumer. With this individual support, the Consumer can explore options, make informed decisions, and achieve individually defined control over his or her life.
- Peer Support Counselors may be staff members or Community Advocates. Community Advocates are specially-trained Consumers who visit other Consumers in nursing homes and provide peer support, companionship, and share information on independent living to those who wish to transition into the community.
- Cross-Disability Support Groups are made up of individuals with a variety of disabilities, who come together to share their experiences and support and who learn from one another. Currently, active support groups are for young people between ages 18 and 27

and disabled women over age 50.

- Volunteer Program - To assist the Center in all operations from skills training to clerical activities, volunteers who have disabilities, as well as those who do not, are recruited on a regular basis. Volunteers broaden their horizons and, in some cases, increase their prospects for employment through their experiences at Liberty Resources.
- Youth Outreach Project -The Young Persons' Outreach Project (YPOP) focuses on school-aged children with disabilities and their parents to role model as well as educates them about independent living. Center staff provides skills training and assist with planning independent futures. Participation in Transitional Fairs is a big part of YPOP.

SKILLS TRAINING

Training services offer individuals the opportunity to learn and practice those skills needed to live independently in the community. Training is provided individually and in small groups and emphasizes independent living skills, such as budgeting/ financial management, personal assistant management, nutrition and meals, Consumer rights and responsibilities, community mobility, socialization, and communication. Read more about our skills training classes.

Locations and Contact Information

Philadelphia Office:
714 Market Street, Suite 100
Philadelphia, PA 19106

215-634-2000
fax: 215-634-6628
tdd: 215-634-6630
toll free: 888-634-2155
email: LRinc@libertyresources.org

Allentown CSPPPD Office
919 South 9th Street
Allentown, PA 18103-3991
610-432-3880 (voice/tdd)
fax: 610-432-3824
toll free: 888-879-1444
email: LRinc@libertyresources.org

Pennsylvania Bar Association
Sign Language Interpreter/CART Fund
Reimbursement Application

The Pennsylvania Bar Association has established the Sign Language Interpreter/CART Fund (the "Fund") to reimburse attorneys who pay for sign language and/or CART interpreters to communicate with clients or potential clients who are deaf or hard of hearing. While the Fund is open to all members of the Pennsylvania Bar Association, it is intended primarily to benefit clients of small firms, solo practitioners, public interest firms and pro bono volunteers.

The Fund will reimburse a member for up to $150 for sign language interpreter or CART fees per interpreter appointment, up to a maximum of two (2) appointments per quarter until the fund is exhausted.

To access the Fund, a Pennsylvania Bar Association member shall pay the interpreter's bill and mail or fax a copy of the bill to the Pennsylvania Bar Association with a signed copy of the certification to Louann Bell at:

Pennsylvania Bar Association
Legal Services to Persons with Disabilities Committee
P.O. Box 186
Harrisburg, PA 17018-0186
FAX: 717-238-7182

To determine if money remains in the Fund or ask questions about the Fund, please contact Louann Bell, staff liaison of the PBA Legal Services to Persons with Disabilities Committee at 800-932-0311, ext. 2276.

The Sign Language Interpreter and Transliterator State Registration Act, 63 P.S. §1725.1 *et seq.* ("Act 57") requires that sign language interpreters be registered with the Commonwealth in certain circumstances. For more information about Act 57 or sign language interpreters in general, contact the Pennsylvania Office for the Deaf and Hard of Hearing (ODDH) at 1-800-233-3008 or RA-LI-OVR-ODHH@state.pa.us or visit ODHH's website at http://www.dli.state.pa.us/landi/cwp/view.asp?a=128@1=224493.

CERTIFICATION

I, _____, Esquire, herby certify that

1. On _____, 20___, I used a sign language interpreter/CART,

   _____, to
   (name of Interpreter/CART)
   communicate with a client or potential client who is deaf or hard of hearing.

2. I paid $_____ to the interpreter/CART or his/her employer for their services.

3. A true and correct copy of the bill for the interpreter's/CART's services is attached hereto.

4. To the best of my knowledge, information and belief, the interpreter/CART was registered in accordance with the Sign Language Interpreter and Transliterator State Registration Act, 63 P.S. § 1725.1 *et seq.* ("Act 57-2003").

5. I request reimbursement of $_____ (*insert amount up to $150)* for the appointment. Please make check payable: _____

   _____

6. I am current a member in good standing of the Pennsylvania Bar Association and was a member in good standing at the time of the appointment.

_____
SIGNATURE

_____
PRINT NAME

_____
FIRM

_____
ADDRESS

_____

_____
DATE

PHILADELPHIA BAR ASSOCIATION
SIGN LANGUAGE INTERPRETER FUND
REIMBURSEMENT APPLICATION

ABOUT THE PHILADELPHIA BAR ASSOCIATION SIGN LANGUAGE INTERPRETER FUND (THE "FUND"): The Philadelphia Bar Association has established the Fund to reimburse attorneys who pay for sign language interpreters to communicate with clients or potential clients who are deaf or hard of hearing. While the Fund is open to all members of the Philadelphia Bar Association, it is intended primarily to benefit clients of small firms, solo practitioners, public interest firms and pro bono volunteers.

The Fund will reimburse a member for up to $100 for sign language interpreter fees per interpreter appointment up to a maximum of two (2) appointments per quarter until the fund is exhausted. If in the fourth (4th) quarter of a year, the Philadelphia Bar Association determines in its discretion that money in the Fund could go unused in that year, the Philadelphia Bar Association may waive the maximum limit of reimbursement for that quarter or, in the alternative, roll any unused funds over into the following year or years.

To access the Fund, a Philadelphia Bar Association member shall pay the interpreter's bill and submit a mail or fax a copy of the bill to the Philadelphia Bar Association with a signed copy of the certification below to:

Philadelphia Bar Association
Attn: Kenneth Shear, Executive Director
1101 Market St., 11th Fl. Philadelphia, PA 19107 FAX (215) 238-1159.

Please contact Executive Director Kenneth Shear of the Philadelphia Bar Association at (215) 238-6338 to determine if money remains in the Fund or to ask questions about the Fund.

The Sign Language Interpreter and Transliterator State Registration Act, 63 P.S. ¤ 1725.1 *et seq.* ("Act 57") requires that sign language interpreters be registered with the Commonwealth in certain circumstances. For more information about Act 57 or sign language interpreters in general, contact the Pennsylvania Office for the Deaf and Hard of Hearing (ODHH) at 1-800-233-3008 or e-mail: RA-LI-OVRODHH@state.pa.us or visit ODDH's website at www.dli.state.pa.us.

CERTIFICATION

I, _____, Esquire, hereby certify that

On _____, 200__, I used a sign language interpreter, _____ (*Name of Interpreter*), to communicate with a client or potential client who is deaf or hard of hearing.

I paid $_____ to the interpreter or his/her employer for the interpreter's services.

A true and correct copy of the bill for the interpreter's services is attached hereto.

To the best of my knowledge, information and belief, the interpreter was registered (or was not required to be registered) in accordance with the Sign Language Interpreter and Transliterator State Registration Act, 63 P.S. ¤ 1725.1 *et seq.* ("Act 57-2003").

I request reimbursement of $_____ (*insert amount up to $100*) for the appointment.

Please make check payable to _____.

I am currently a member in good standing of the Philadelphia Bar Association and was a member in good standing at the time of the appointment.

SIGNATURE

PRINT NAME

FIRM

ADDRESS

DATE

Pennsylvania Client Assistance Program Cap

Background:

The Client Assistance Program (CAP) is an advocacy program established by Section 112 of the Rehabilitation Act of 1973, as amended (ACT). Each State and Territory of the United States has a CAP to help individuals with disabilities get the services they need from programs funded under the Act.

Eligibility for CAP services:

You are eligible for all CAP services if you are applying for/or receiving services from a program funded under the Act. Two of the commonly used programs are the vocational rehabilitation (VR) program and the independent living (IL) program.

You are eligible only for information and referral services if you are an individual with a disability who is not applying for/or receiving services from a program funded under the Act.

Types of services CAP can provide:

CAP has the right to decided how its advocates can best serve the individuals who need CAP services. This means that CAP is not required to provide every service to every individual. CAP makes these decisions after considering the facts and merits of the case, the needs of the client, and available resources. Below is a list of the services CAP can provide. All services are free.

1. Information and referral services regarding:
    a. Services and benefits avail under the Act; and
    b. Rights under Title I of the Americans with Disabilities Act (ADA);
2. Advice and interpretation of the Act and its regulations;
3. Negotiation to resolve problems; and
4. Advocacy and representation at mediation sessions.

CAP can also help solve problems that affect many individuals through "systemic advocacy". This often involves making changes to state rules and policies and participating on councils, such as the State Rehabilitation Council.

How to contact CAP:

You should contact CAP whenever you have a question about your rights under the Act or you are unhappy about the services you are receiving from a program funded under the Act. You can call CAP at 1-888-745-2357 (Voice/TTY).

Philadelphia Office
1515 Market Street, Suite 1300
Philadelphia, PA 19102
Toll Free 1(888) 745-2357
Voice/TTY (215) 557-7112
Fax (215) 557-7602

Camp Hill Office
207 House Avenue, Suite 107
Camp Hill, PA 17011
Toll Free 1 (800) 323-6060 ext. 240
Voice 717-731-1077
TTY (800) 829-7404
Fax (717) 731-8150

e-mail: info@equalemployment.org
www.equalemployment.org

For more information contact us at: 1-800-949-4232

(http://www.dbtac.com/)

Questions and Answers for Small Businesses: The Final Rule Implementing the ADA Amendments Act of 2008

The ADA Amendments Act of 2008 (ADAAA) was enacted on September 25, 2008, and became effective on January 1, 2009. This law made a number of significant changes to the definition of "disability." It also directed the U.S. Equal Employment Opportunity Commission (EEOC) to amend its ADA regulations to reflect the changes made by the ADAAA. The final regulations will be published in the Federal Register on March 25, 2011.

The ADAAA did not change the basic legal requirement that employers must not discriminate against individuals with disabilities who are qualified for a job, with or without reasonable accommodation. The questions and answers below provide information on what has changed because of the ADAAA, what in the law remains the same, and some tips for complying with the law as amended. For general information on how the ADA's employment provisions apply to small businesses, you may consult "The ADA: A Primer for Small Business" at **www.eeoc.gov/eeoc/publications /adahandbook.cfm (http://www.eeoc.gov/eeoc/publications/adahandbook.cfm)** .

1. What is the purpose of the ADAAA?

Among the purposes of the ADAAA is reinstatement of a "broad scope of protection" by expanding the definition of the term "disability." Congress found that persons with many types of impairments – including epilepsy, diabetes, multiple sclerosis, major depression, and bipolar disorder – had been unable to bring ADA claims because they were found not to meet the ADA's definition of "disability." Yet, Congress thought that individuals with these and other impairments should be covered. As a result of the ADAAA and EEOC's regulations, it will be much easier for individuals seeking the law's protection to demonstrate that they meet the definition of "disability."

2. Must all small businesses comply with the ADAAA and these regulations?

No. These regulations apply to all private employers with 15 or more employees. State

or local laws, however, may apply to smaller employers. Additionally, the ADAAA's changes to the definition of disability would apply to employers who are federal contractors or subcontractors subject to Section 503 of the Rehabilitation Act and to employers who receive federal financial assistance under Section 504 of the Rehabilitation Act, regardless of the number of employees they have. Finally, although these regulations do not apply to the employment practices of businesses with fewer than 15 employees, such businesses, if they are considered places of public accommodation, are required to comply with the ADAAA's changes to the definition of disability under Title III of the ADA with respect to the goods and services they provide to the public.

3. Does the ADAAA apply to discriminatory acts that occurred prior to January 1, 2009?

No. The ADAAA does not apply retroactively. For example, the ADAAA would not apply to a situation in which an employer allegedly failed to hire, terminated, or denied a reasonable accommodation to someone with a disability in December 2008, even if the person did not file a charge with the EEOC until after January 1, 2009. The original ADA definition of disability would be applied to such a charge. However, the ADAAA would apply to denials of reasonable accommodation where a request was made (or an earlier request was renewed) or to other alleged discriminatory acts that occurred on or after January 1, 2009.

4. How do the ADAAA and the EEOC regulations define "disability?"

The ADAAA and the regulations define "disability" as:

- a physical or mental impairment that substantially limits one or more major life activities (sometimes referred to in the regulations as an "actual disability"), or
- a record of a physical or mental impairment that substantially limited a major life activity ("record of"), or
- when an employer takes an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor ("regarded as").

We will address each of these definitions (sometimes called the three "prongs" of the definition) of disability.

PRONG 1: AN "ACTUAL DISABILITY"

5. How do the regulations define the term "physical or mental impairment"?

Basically, an impairment is a physical or mental disorder, illness, or condition. Like EEOC's original ADA regulations and interpretive guidance (sometimes called the Appendix to the regulations), the revised regulations and appendix distinguish between

impairments and ordinary personality traits, such as irritability, poor judgment, or chronic lateness, that are unrelated to a physical or mental impairment.

The revised regulations define "physical or mental impairment" as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine. They also cover any mental or psychological disorder, such as intellectual disability (formerly termed mental retardation), organic brain syndrome, emotional or mental illness, and specific learning disabilities. This is basically the same definition that was included in the original ADA regulations.

6. What are "major life activities?"

The regulations provide a non-exhaustive list of examples of major life activities: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

The regulations also state that major life activities include the operation of major bodily functions, including functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The regulations also state that major bodily functions include the operation of an individual organ within a body system (e.g., the operation of the kidney, liver, or pancreas).

As a result of the ADAAA's recognition of major bodily functions as major life activities, it will be easier to find that individuals with certain types of impairments have a disability.

7. How much does an impairment have to limit someone to be considered a disability?

An individual must be substantially limited in performing a major life activity as compared to most people in the general population. However, Congress lowered the threshold for establishing a substantial limitation from the standards established by courts and in the original ADA regulations. An impairment no longer has to prevent or severely or significantly restrict a major life activity to be considered "substantially limiting."

Congress directed that the term "substantially limits" be construed broadly in favor of expansive coverage, although not all impairments will constitute a disability. Furthermore, under the ADAAA and the EEOC's regulations, the question of whether an impairment is a disability should not demand an extensive analysis.

8. Do the regulations require that an impairment last a particular length of time to be considered substantially

limiting?

No. Even a short-term impairment may be a disability if it is substantially limiting.

9. What kinds of facts might be relevant in determining whether an impairment substantially limits a major life activity?

The regulations state that the condition, manner, or duration (where duration refers to the length of time it takes to perform a major life activity or the amount of time the activity can be performed) under which a major life activity can be performed may be considered if relevant in certain cases in determining whether the impairment is a disability. But, with respect to many impairments, including those that should easily be concluded to be disabilities (see Question 16), it may be unnecessary to use these concepts to determine whether the impairment substantially limits a major life activity. Assessment of the condition, manner, or duration may include consideration of the difficulty, effort, or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; and/or the way an impairment affects the operation of a major bodily function.

10. Can an impairment that does not affect someone all the time be considered a disability?

Yes. The ADAAA and the regulations specifically state that an impairment that is "episodic or in remission" (i.e., the impairment's limitations are not present all the time) meets the definition of disability if it would substantially limit a major life activity when active. This means that even if the effects of an impairment occur briefly or infrequently, the impairment could still be a disability.

Examples of impairments that may be episodic include epilepsy, hypertension, asthma, diabetes, major depressive disorder, bipolar disorder, and schizophrenia. An impairment such as cancer that is in remission but that may possibly return in a substantially limiting form will also be a disability under the ADAAA and the regulations.

11. If someone takes medication or uses some kind of a device, like a hearing aid, to lessen the effects of an impairment, may that be considered in determining whether the person has a disability?

No, except for ordinary eyeglasses or contact lenses (see Question 12). The ADAAA and the regulations require that the positive effects from an individual's use of one or more "mitigating measures" be ignored in determining if an impairment substantially limits a major life activity. Instead, the determination of disability must focus on whether the

individual would be substantially limited in performing a major life activity without the mitigating measure. This may mean focusing on the extent of limitations prior to use of a mitigating measure or on what would happen if the individual ceased using it.

The ADAAA and the regulations provide a non-exhaustive list of examples of mitigating measures. They include medication, medical equipment and devices, prosthetic limbs, low vision devices (e.g., devices that magnify a visual image), hearing aids, mobility devices, oxygen therapy equipment, use of assistive technology, reasonable accommodations, learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, and physical therapy.

12. Does the rule concerning mitigating measures apply to people whose vision is corrected with ordinary eyeglasses or contact lenses?

No. "Ordinary eyeglasses or contact lenses" – defined in the ADAAA and the regulations as lenses that are "intended to fully correct visual acuity or to eliminate refractive error" – must be considered when determining whether someone has a disability. For example, a person who wears ordinary eyeglasses to correct a routine vision impairment is not, for that reason, a person with a disability under the ADA. However, the ADAAA and the regulations do allow even individuals with fully corrected vision to challenge uncorrected vision standards that exclude them from jobs. An employer must be able to show that the challenged standard is job-related and consistent with business necessity.

13. May the positive or negative effects of mitigating measures be considered when assessing whether someone is entitled to "reasonable accommodation" or poses a "direct threat?"

Yes. The ADAAA's prohibition on assessing the positive effects of mitigating measures applies only to the determination of whether an individual meets the definition of "disability." Other determinations – including the need for a reasonable accommodation and whether an individual poses a direct threat (a significant risk of substantial harm to self or others) – can take into account both the positive and negative effects of a mitigating measure. The negative effects of mitigating measures may include side effects or burdens that using a mitigating measure might impose. For example, someone with diabetes may need breaks to take insulin and monitor blood sugar levels, and someone with kidney disease may need a modified work schedule to receive dialysis treatments. On the other hand, if an individual with a disability uses a mitigating measure that results in no negative effects and eliminates the need for a reasonable accommodation, an employer will have no obligation to provide one. For example, an employee with epilepsy may no longer need permission for unscheduled breaks as a reasonable accommodation after switching to a different medication that completely controls seizures.

14. May an employer require that an individual use a mitigating measure?

No. An employer cannot require an individual to use a mitigating measure. However, failure to use a mitigating measure may affect whether an individual is qualified for a particular job or poses a direct threat.

15. Do the ADAAA and EEOC's regulations still require that an individualized assessment be done to determine whether an impairment is a disability?

Yes. However, certain impairments, due to their inherent nature and the extensive changes Congress made to the definitions of "major life activities" and "substantially limits," will virtually always be disabilities. For these impairments, the individualized assessment should be particularly simple and straightforward.

16. Do the regulations give any examples of specific impairments that will easily be concluded to substantially limit a major life activity?

Yes. The regulations identify specific types of impairments that should easily be concluded to be disabilities and examples of major life activities (including major bodily functions) that the impairments substantially limit. The impairments include: deafness, blindness, intellectual disability (formerly known as mental retardation), partially or completely missing limbs, mobility impairments requiring use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia.

17. Is pregnancy a disability under the ADAAA?

No. Pregnancy is not an impairment and therefore cannot be a disability. Certain impairments resulting from pregnancy (e.g., gestational diabetes), however, may be considered a disability if they substantially limit a major life activity or if they meet one of the other two definitions of disability discussed below.

PRONG 2: A RECORD OF A DISABILITY

18. When does an individual have a "record of" a disability?

An individual who does not currently have a substantially limiting impairment but who

had one in the past meets this definition of "disability." An individual also can meet the "record of" definition of disability if she was once misclassified as having a substantially limiting impairment (e.g., someone erroneously deemed to have had a learning disability but who did not).

All of the changes to the first definition of disability discussed in the questions above – including the expanded list of major life activities, the lower threshold for finding a substantial limitation, the clarification that episodic impairments or those in remission may be disabilities, and the requirement to disregard the positive effects of mitigating measures – will apply to evaluating whether an individual meets the "record of" definition of disability.

PRONG 3: REGARDING AN INDIVIDUAL AS HAVING A DISABILITY

19. What does it mean for an employer to "regard" an individual as having a disability?

Under the ADAAA and the regulations, an employer "regards" an individual as having a disability if it takes an action prohibited by the ADA (e.g., failure to hire, termination, or demotion) based on an individual's impairment or on an impairment the employer believes the individual has, unless the impairment is both transitory (lasting or expected to last for six months or less) and minor. This new formulation of "regarded as" having a disability is different from, and is easier to meet, than the previous standard.

The regulations state that an employer may challenge a claim under the "regarded as" prong by showing that the impairment in question, whether actual or perceived, is both transitory and minor. In other words, whether the impairment in question is transitory and minor is a defense available to employers. However, an employer may not defeat a claim by asserting it believed an impairment was transitory and minor when objectively this is not the case. For example, an employer who fires an employee because he has bipolar disorder cannot assert that it believed the impairment was transitory and minor because bipolar disorder is not objectively transitory and minor.

20. If an employer regards an individual as having a disability, does that automatically mean the employer has discriminated against the individual?

No. The fact that an employer's action may have been based on an impairment does not necessarily mean that the employer engaged in unlawful discrimination. For example, an individual still needs to be qualified for the job he or she holds or desires. Additionally, in some instances, an employer may have a defense to an action taken on the basis of an impairment, such as where a particular individual would pose a direct threat or where the employer's action was required by another federal law (e.g., a law that prohibits individuals with certain impairments from holding certain kinds of jobs). As under current law, an employer will be held liable only when the employee proves that the employer engaged in unlawful discrimination under the ADA.

OTHER ISSUES ADDRESSED BY THE ADAAA

21. Does an individual have to establish coverage under a particular definition of disability to be eligible for a reasonable accommodation?

Yes. Individuals must meet either the "actual" or "record of" definitions of disability to be eligible for a reasonable accommodation. Individuals who only meet the "regarded as" definition are not entitled to receive reasonable accommodation. Of course, coverage under the "actual" or "record of" definitions does not, alone, entitle a person to a reasonable accommodation. An individual must be able to show that the actual disability, or past disability, requires a reasonable accommodation.

22. May a non-disabled individual bring an ADA claim of discrimination for being denied an employment opportunity or a reasonable accommodation because of lack of a disability?

No. The ADA does not protect an individual who is denied an employment opportunity or a reasonable accommodation because she does not have a disability.

WHAT THE ADAAA DOES NOT CHANGE

23. May a business still refuse to hire or terminate someone because he or she is currently engaging in the illegal use of drugs?

Yes. The ADAAA did not make changes to the part of the ADA that excludes from coverage a person who currently engages in the illegal use of drugs when an employer acts on the basis of such use. However, the ADA also still says that a person who no longer engages in the illegal use of drugs may be an individual with a disability if he:

- has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully, or
- is participating in a supervised rehabilitation program (e.g., Alcoholics Anonymous or Narcotics Anonymous).

24. Does an individual with a disability still have to be qualified for a job? And may small businesses still hire the most qualified person?

Yes. The ADAAA does not change the requirement that an individual with a disability be "qualified" for a job. An individual is qualified for a job if he can meet a job's general requirements -- e.g., skills, education, experience -- and can perform the essential job duties, with or without reasonable accommodation.

Additionally, although an employer may not refuse to hire a person with a disability for discriminatory reasons (e.g., because she needs a reasonable accommodation), it may still hire the best qualified person for a job.

25. Do any of the ADAAA's changes affect workers' compensation laws or Federal and State disability benefit programs?

No. The ADAAA and the regulations specifically state that changes to the ADA do not alter the standards for determining eligibility for benefits under State workers' compensation laws or under Federal and State disability benefit programs.

26. Has the process for providing reasonable accommodation changed as a result of the ADAAA and the EEOC's regulations?

No. Generally, a person with a disability still has to make a request for an accommodation, and an interactive process between the person with a disability and the employer may still be necessary to determine an appropriate accommodation. As part of this process, an employer may still ask for reasonable documentation showing a disability and a need for a reasonable accommodation where the disability and need for accommodation are not obvious or already known. However, since the definition of disability has been broadened, documentation may focus less on whether the person has a disability and more on the need for an accommodation. Finally, an employer is not required to provide an accommodation that would cause the employer an "undue hardship," meaning significant expense or difficulty. For more information on reasonable accommodation, consult the EEOC's Guidance on Reasonable Accommodation and Undue Hardship, **www.eeoc.gov/policy/docs/accommodation.html (http://www.eeoc.gov/policy/docs/accommodation.html)** .

27. Does a small business have to employ someone with a disability who poses a health or safety risk?

An employer does not have to employ a person who poses a "direct threat," meaning significant risk of substantial harm to the health or safety of the individual or others. However, this is a stringent standard requiring an individualized assessment of the risks posed by a specific person with a disability in a particular job. An employer cannot rely on generalized information about a disability, or on myths, fears, or stereotypes about a disability when excluding someone on the basis of health or safety concerns.

TIPS FOR COMPLIANCE WITH THE ADAAA

28. What can small businesses do to make sure they comply with the ADAAA and the EEOC's regulations?

As a result of the ADAAA's expansion of the definition of disability, there are a number of things small businesses can do to make sure they comply with the ADA and these regulations.

- Review the wide array of resources on EEOC's website. Most of these resources are written in a user-friendly question-and-answer format. Some, like "The ADA: A Primer for Small Business," **www.eeoc.gov/eeoc/publications /adahandbook.cfm (http://www.eeoc.gov/eeoc/publications/adahandbook.cfm)** , are

intended specifically for small businesses. EEOC will be revising portions of many of these documents to reflect changes resulting from the ADAAA. When EEOC updates a particular document, we will note this on our website and explain what changes were made. All of these documents currently contain notices about the ADAAA indicating that some of the material in the documents may no longer reflect the law. It should be noted that because the ADAAA focused almost exclusively on changing the definition of "disability," content in these documents unrelated to the definition of "disability" remains unaffected by the ADAAA and these regulations. Therefore, small businesses can continue to rely on these parts of the documents as reflecting current law.

- Review any policies that may address disability or otherwise affect individuals with disabilities (e.g., leave policies and policies for providing reasonable accommodations) to ensure they comply with the ADA and ADAAA.

For more information about the ADA, please visit our website, or contact our Small Business Liaisons who can provide confidential assistance with ADA compliance in specific workplace situations.

EEOC website: **www.eeoc.gov (http://www.eeoc.gov/index.cfm)**

To find the Small Business Liaison nearest you, go to

www.eeoc.gov/employers/contacts.cfm (http://www.eeoc.gov/employers/contacts.cfm)

For more information about reasonable accommodations, contact the Job Accommodation Network. JAN provides free, expert, and confidential guidance on workplace accommodations.

JAN website: **www.askjan.org (http://www.askjan.org/)**

800-526-7234 (Voice) and 877-781-9403 (TTY)

Pasted from **<http://www.eeoc.gov/laws/regulations/adaaa_qa_small_business.cfm (http://www.eeoc.gov/laws/regulations/adaaa_qa_small_business.cfm) >**

1-800-949-4232

U.S. Equal Employment Opportunity Commission

Selected List of Pending and Resolved Cases Under the Americans with Disabilities Act Amendments Act

(as of June 11, 2012)

PENDING:

Christian Care Center of Johnson City: (E.D. Tenn.) filed on 5/16/12 by Memphis District Office - The Commission alleges that Defendant, a provider of nursing home facilities and services, violated the ADA by terminating Charging Party subsequent to learning of the Charging Party's HIV-positive status.

AT &T: (N.D. Ind.) filed on 5/7/2012 by St. Louis District Office - Charging Party had Hepatitis C and was granted short-term disability leave to have Interferon treatments. The treatments lasted for 8 months and affected her ability to walk, stand, think, and concentrate. Four of the 8 months of her leave were concurrent with FMLA. When her FMLA was exhausted, she continued on paid STD leave. When she returned from leave, she was fired because her short-term disability leave was chargeable under AT&T's attendance policy. The Commission alleges that Defendant failed to provide CP with non-chargeable leave as a reasonable accommodation and discharged her because of her disability.

CTW L.L.C: (W.D. Tex.) filed on 4/16/12 by Dallas District Office - Charging Party has a hearing impairment. While interviewing for a cook position with Defendant, a Wendy's franchisee, the Commission alleges that Defendant denied employment to Charging Party because of his disability, in violation of ADA.

Charlotte Renaissance LLC/Golden Living Center-Dartmouth: (W.D. N.C.) filed on 3/19/12 by Charlotte District Office - The Commission alleges that Defendant, a nursing home, discriminated against Charging Party by refusing her request for medical leave after learning of her hospitalization for major depressive disorder. The complaint also alleges that Charging Party was subsequently terminated because of her disability, in violation of the ADA.

Heartland Automotive Services, Inc.: (W.D. Tenn.) filed on 1/24/12 by Memphis District Office- The Commission alleges that Defendant, the nation's largest Jiffy Lube franchisee, violated the ADA by refusing to hire Charging Party because he suffers from a hearing impairment.

Rite Aid: (N.D. Ga.) filed 9/7/10 by Atlanta District Office - Charging Party, a cashier, has severe arthritis and is unable to walk and stand for long periods of time. The complaint alleges that Defendant, a drugstore chain, discriminated against the

Charging Party by failing to provide a reasonable accommodation and subsequently discharging her because of her disability.

Tri City Comprehensive Community Mental Health Center: (N.D. Ind.) filed 11/8/10 by Indianapolis District Office - The Commission alleges that Defendant, a large Northern Indiana operator of community mental health facilities, violated the ADA by refusing to accommodate Charging Party's disability when she required leave for breast cancer treatment and subsequently discharged her because of her disability.

Evergreen Alliance Golf Limited, L.P: (D. Ariz.) filed 4/5/11 by Phoenix District Office - The Commission alleges that Defendant, the parent company of Arrowhead Country Club in Glendale, Arizona, allegedly retaliated against Charging Party, who has cerebral palsy, after he complained of a discriminatory remark made by a new manager. Defendant, in violation of the ADA, also reduced Charging Party's sales responsibilities, set unattainable sales goals, disciplined him, and subsequently discharged him due to this disability and in retaliation for his complaint.

Gannett Company, Inc. and Gannett Media Technologies, Inc.: (D. Ariz.) filed 4/6/11 by Phoenix District Office - The Commission alleges that Defendant, an international news and information company, violated the ADA when it discharged Charging Party on the first day after she returned from a medical leave of absence for her mental disability. Defendant discharged Charging Party even though she exceeded expectations as an application support analyst and was up for a promotion when she went on medical leave.

Dollar General Store: (S.D. Ind.) filed 4/26/11 by Houston District Office - The Commission alleges that Defendant discharged Charging Party because of his disabilities, Immunodeficiency Virus (HIV), bi-polar disorder, and spondylosis, and because it regarded him as disabled even though he was qualified and could perform the essential functions of his job as a part time sales associate or stocker.

Dolgencorp, LLC, d/b/a Dollar General Store: (M.D. N.C.) filed 6/6/11 by Indianapolis District Office - The Commission alleges that Defendant failed to provide a reasonable accommodation to an employee with dyslexia and then demoted him because of his disability.

Johns Hopkins Home Care Group, Inc: (D. Md.) filed 7/12/11 by Philadelphia District Office - The Commission alleges that Charging Party, a registered nurse, was employed as a pediatric case manager with Defendant when she was diagnosed with breast cancer in 2009. Defendant, a full-service home health care provider, refused to provide Charging Party with reasonable accommodations, despite her being released to return to work. Charging Party filed an EEOC charge against Defendant for its failure to accommodate her, and Defendant subjected her to adverse employment actions, including discharging her, due to her disability and in retaliation for her filing a charge.

JES Personnel Consultants, Inc. d/b/a Genie Temporary Service: (N.D. Ill.) filed 7/28/11 by Chicago District Office - The Commission alleges that Defendant, a temporary employment agency, refused to allow Charging Party to return to work because of his epilepsy.

Ryla Teleservices: (N.D. Ga.) filed 8/8/11 by Atlanta District Office - The Commission alleges that Defendant, a call center service company, failed to accommodate Charging Party, a customer service representative, and discharged her because of her disability, bi-polar disorder.

Children's Hospital: (D. Colo.) filed 8/11/11 by Phoenix District Office - The Commission alleges that Defendant, a nonprofit corporation (hospital) located in Colorado, offered Charging Party a position as a Staff Assistant, contingent upon successful completion of a pre-employment health screen, but withdrew its offer of employment because of her disability, fibromyalgia, and/or her record of disability, and/or because Defendant regarded her as disabled, and/or because she may have needed a reasonable accommodation to perform the essential functions of the Administrative Assistant position.

National HealthCare Corporation: (N.D. Ga.) filed 8/17/11 by Atlanta District Office - The Commission alleges that Defendant, a long-term and nursing care provider, discharged Charging Party due to her disability, multiple sclerosis and bursitis. Respondent hired Charging Party as a part-time weekend registered nurse and shift supervisor. While filling out the new hire paperwork, Charging Party disclosed she had multiple sclerosis and a history of bursitis. Defendant notified Charging Party that she needed to submit a medical release form from her physician, but discharged her the next day, before she could get the proper documentation.

Rexnord Industries, LLC: (E.D. Wis.) filed 8/18/11 by Chicago District Office - The Commission alleges that Defendant, a manufacturer of components for various industries, discharged Charging Party because of migraine headaches and because Defendant regarded her as having a seizure disorder. Defendant discharged Charging Party after she twice became ill at work.

Kohl's Department Stores: (D. Me.) filed 8/23/11 by New York District Office - Charging Party began to suffer significant complications due to her diabetes after Defendant switched her from her long-held set schedule to an irregular schedule. The Commission alleges that Defendant refused to accommodate her requests for a regular schedule, even after Charging Party brought in a note from her doctor that explained the need for her to work a predictable day shift to help prevent serious complications from her diabetes. Charging Party had no choice but to resign her employment to protect her health due to Defendant's failure to accommodate her.

SITA Information Networking Computing USA, Inc: (N.D. Ga.) filed 8/24/11 by Atlanta District Office - The Commission alleges that Defendant, an air transport communications and IT solutions provider, unlawfully discriminated against charging party because of her cancer surgery. Charging Party was hired as a full-time personal assistant to SITA's vice president and, shortly after accepting the offer of employment, learned that she would require surgery as a result of her cancer. The Commission alleges that Defendant rescinded Charging Party's offer of employment rather than accommodate her.

America's Thrift Store: (N.D. Ala.) filed 8/25/11 by Birmingham District Office - The Commission alleges that Defendant's failed to accommodate Charging Party and discharged her due to her disability, a mobility limiting musculoskeletal condition of her spine.

The Scooter Store: (E.D. N.Y) filed 8/31/11 by New York District Office - The Commission alleges that Defendant, a supplier of scooter chairs for those with limited mobility, failed to provide Charging Party with reasonable accommodations and then discharged him due to his disability. Charging Party, a salesperson, has psoriatic arthritis. He needed a leave of absence due to his disability after sustaining a knee injury. The Commission alleges that Defendant denied Charging Party a leave of absence and then discharged him, even though he timely informed Defendant of his disability and had presented medical documentation of his need for leave.

OSI Restaurant Partners, LLC d/b/a Outback Steakhouse and OS Restaurant Services, Inc.: (D. Ariz.) filed 9/6/11 by Phoenix District Office - The Commission alleges that Defendant, a nationwide restaurant chain, failed to provide a reasonable accommodation and discharged Charging Party from his server position due to his disability, traumatic brain injury, or because he needed an accommodation.

McKinney Griff, Inc. d/b/a Merritt Restaurant and Bakery: (N.D. Cal.) filed 9/8/11 by San Francisco District Office - The Commission alleges that Charging Party, a cook and kitchen manager, has a history of seizures and had a seizure while working the night shift in September 2009. The Commission alleges that Defendant refused to let Charging Party leave work when he felt a seizure coming on and delayed his reinstatement after he had received clearance from doctors to return to work. Charging Party also alleges that Defendant transferred him to the day shift, causing a decrease in work hours and pay, and discharged him due to his disability and in retaliation for complaining about his treatment after the seizure.

Gulf Coast Homecare: (S.D. Miss.) filed 9/9/11 by Birmingham District Office - Defendant failed to accommodate and discharged Charging Party because of her disability, epilepsy. After Charging Party had a seizure, Respondent refused to give her assistance in remembering how to do her job. Defendant's manager told Charging Party, "Because of your seizures, we think it's best to let you go."

Alia Corporation d/b/a McDonald's: (E.D. Cal.) filed 9/13/11 by Los Angeles District Office - The Commission alleges that alleges that Defendant, Alia Corporation, a property management company and owner of a McDonald' s, demoted him because of his cerebral palsy and forced him to quit, in violation of the ADA. Charging Party had worked under a prior owner of the McDonald's without problems and had been promoted from crew member to floor supervisor. When Defendant assumed control of the restaurant, Charging Party was demoted to a janitorial position, his hours were cut nearly in half, and his wages were reduced. Due to the steep reduction in income, Charging Party was forced to quit.

LeGrand North America, Inc. & Insource Performance Solutions, LLC: (D. S.C.) filed 9/14/11 by Charlotte District Office - Charging Party, who has asthma, worked for Defendant as a forklift driver. Charging Party was assigned to count inventory, but he was concerned that the heat near the top of the warehouse would trigger his asthma so he requested an accommodation which would enable him to perform the task. The Commission alleges that Defendant denied this request, sent Charging Party home, and discharged him the next day for failing to complete the inventory count. Thus, The Commission alleges that Defendant failed to accommodate Charging Party and discharged him due to his disability.

Wal-Mart: (D. N.M.) filed 9/19/11 by Dallas District Office - Defendant, the largest retailer in the U.S., refused to reasonably accommodate Charging Party's disability, cerebral palsy. Charging Party was a long-time sales clerk at Defendant's Carlsbad, New Mexico store. She returned from a medical leave for surgery with a temporary limitation requiring periodic breaks from standing. Defendant denied Charging Party's request for accommodation, refused to allow her to return to work unless she produced a medical release without restrictions, which she could not provide, and discharged her for being unable to provide an unrestricted release.

McCormick & Schmick's Seafood Restaurant: (D. Md.) filed 9/19/11 by Philadelphia District Office - Charging Party worked for defendant as a prep chef and successfully performed his job for over a year. When a new head chef started, he subjected Charging Party to harassment because of his disability (deafness), by calling him "vermin" and kicking boxes at his head. After Charging Party complained about the discriminatory treatment, the Commission alleges that Defendant demoted him from his prep cook position to dishwasher and from dishwasher to utility person while cutting his work hours. Finally, he Commission alleges that defendant discharged Charging Party because of his disability and in retaliation for his complaints of harassment.

ABCO West Electrical Construction & Design L.L.C. and ABCO Electrical Construction & Design, L.L.C.: (D. Ariz.) filed 9/20/11 by Phoenix District Office - The Commission alleges that Defendant, an electrical construction company, failed to accommodated Charging Party's disability, an amputated leg, and laid off Charging Party and refused to rehire him because of his disability, request for accommodation and because he reported Defendant's actions to his labor union and the EEOC.

Pioneer Place: (D. Or.) filed 9/20/11 by San Francisco District Office - The Commission alleges that Defendant offers full-service assisted living facilities including nursing care, long-term care skilled nursing, and rehabilitation services in Vale, Oregon. Defendant discriminated against Charging Party when it refused to hire her due to the results of her drug test. The drug test was positive due to the prescription medication Charging Party took for her epilepsy. Charging Party had informed Respondent that the medication would show up in her drug test before she took the test.

ITT Technical Institute: (E.D. Cal.) filed 9/21/11 by San Francisco District Office - The Commission alleges that Defendant failed to accommodate a blind applicant during the hiring process and denied him a job because of his disability. Defendant also violated 102(b)(7) (failing to . . . administer tests . . . in the most effective manner . . .) of the ADA by refusing to provide any accommodation to Charging Party which would enable him to complete a required employment screening test.

Maximus, Inc.: (E.D. Va.) filed 9/22/11 by Charlotte District Office - The Commission alleges that Defendant failed to promote Charging Party because it regarded her as disabled by a stroke. Prior to suffering a stroke, Charging Party, a client services rep., applied for the position of sr. client services rep. Upon her return to work after a medical leave of absence, Charging Party provided Defendant with a medical clearance form that cleared her for work and stated that she would need physical therapy at some point. Defendant informed Charging Party that she qualified for the

sr. client services rep. position, but that she was not selected due to her need for physical therapy.

Windmill International, Inc.: (D. N.H.) filed 9/22/11 by New York District Office - The Commission alleges that Defendant, which provides defense consultation and program management to U.S. government and international organizations, failed to provide leave as a reasonable accommodation and discharged Charging Party, an accountant, because it regarded her as disabled due to blocked carotid arteries.

D.O.E. Technologies: (D. Del.) filed 9/22/11 by Philadelphia District Office - The Commission alleges that Defendants, a legal software provider and its wholly-owned subsidiary, failed to reasonably accommodate Charging Party's hearing loss by rescinding his full-time telework privileges and refusing to provide a quiet work area that would allow Charging Party to make his required sales calls. The Commission further alleges that Defendants discharged Charging Party shortly after he complained about Defendant's failure to accommodate his hearing impairment.

Lang's Seafood: (S.D. Ga.) filed 9/23/11 by Atlanta District Office - The Commission alleges that Defendant, a seafood restaurant, discharged Charging Party, a food preparation worker, because he had a prosthetic leg which it claimed was a safely hazard.

Fox Den Apartments: (N.D. Ga.) filed 9/27/11 by Atlanta District Office - The Commission alleges that Defendant, an apartment management company, discharged Charging Party, a property manager, because she had a heart attack.

DuPriest and Sons Holding: (N.D. Tex.) filed 9/27/11 by Dallas District Office - The Commission alleges that Defendant, a print screen company, selected Charging Party, a supervisor with 38 years tenure, for layoff based on his disabilities, diabetes and kidney disease. Defendant selected Charging Party for lay off shortly after he told his employer that he would need dialysis.

BAE Systems L & A - Mobility & Protection: (S.D. Tex.) filed 9/27/11 by Houston District Office - The Commission alleges that Defendant, a Virginia-based military vehicle manufacturer, discharged Charging Party because of his disability, morbid obesity, and because it regarded him as disabled.

Bauermeister, Inc.: (W.D. Tenn.) filed 9/28/11 by Memphis District Office - The Commission alleges that Defendant, an equipment procurement company, discharged Charging Party because of his disability, bi-polar disorder.

Hawaiian Electric Company, Inc.: (D. Haw.) filed 9/29/11 by Los Angeles District Office - The Commission alleges that Defendant, an electric distribution company, failed to hire Charging Party into a meter reader position due to his disability and used a qualification standard that screened him out because of that disability. Charging Party has irreversible and complete blindness in his right eye (monocular vision). Charging Party was a mail machine operator with Defendant and applied for the position of meter reader with the company in or about April 2010. The Commission alleges that Defendant refused to hire him into the meter reader position because of his disability.

Capital Healthcare Solutions, Inc.: (W.D. Pa.) filed 9/29/11 by Philadelphia District Office - The Commission alleges that Charging Party applied for the position of CNA (Certified Nursing Assistant) with Defendant, a medical staffing company. Defendant made a conditional offer of employment, subject to Charging Party's submission to a physical examination and medical paperwork. Charging Party's doctor indicated on the paperwork that Charging Party was HIV positive, and Defendant rescinded the offer based on Charging Party's disability and perceived disability.

Dole Fresh Vegetables Company: (N.D. Cal.) filed 9/29/11 by San Francisco District Office - The Commission alleges that Defendant discriminated against Charging Party by suspending him after an epileptic seizure and not accommodating his disability.

AT&T/Centennial De PR: (D. P.R.) filed 9/30/11 by Miami District Office - The Commission alleges that Defendant failed to provide a reasonable accommodation to the Charging Party, who is blind as a result of diabetic retinopathy.

Continental Structural Plastics, Inc.: (N.D. Ohio) filed 9/30/11 by Philadelphia District Office - The Commission alleges that Defendant manufactures structural plastic components, bumper beam reinforcements, rocker covers, oil pans, stamped steel seat frames, and underbody shields. Defendant failed to accommodate and then discharged Charging Party, after only one day of employment, because of his disability, missing fingers on his right hand.

AT&T: (D. P.R.) filed 10/6/11 by Miami District Office - The Commission alleges a company in Puerto Rico now owned by telecommunications giant AT&T violated federal law when it refused to reasonably accommodate a longtime employee after he went blind from a disability.

According to the EEOC's suit, Charging Party started working for Centennial in November 2001, when he was 20 years old. As a switch technician, he monitored and maintained data, telephone and cellular servers for the wireless provider. Charging Party suffers from diabetic retinopathy, which caused him to lose vision in both eyes in November 2008. The accommodation he requested would have permitted him to continue working as a switch technician by utilizing computer software that allows blind persons to use computer programs and applications. The company knew that such software existed.

Butterball, L.L.C.: (E.D. N.C.) filed 12/1/11 by Charlotte District Office - The Commission alleges Defendant subjected Charging Party to a hostile work environment in violation of the ADA, and later discharged her because of her impairment, Human Immunodeficiency Virus (HIV).

Wal-Mart: (E.D. Cal.) filed 12/15/2011 by San Francisco District Office - The Commission alleges that Defendant refused to accommodate Charging Party and discharged him because of his disability. During his six years at the store, Charging Party's successful performance was reflected in promotions from overnight stocker to manager of the store's tire lube express bay. Charging Party has atrial fibrillation, a heart condition that causes shortness of breath and difficulty walking. A new store manager barred Charging Party from parking in the handicap parking spaces and any spaces close to the front of the store, despite the company's knowledge that

Charging Party had a disability. The Commission also alleges that Wal-Mart fired Charging Party in retaliation for filing a charge with the EEOC.

Midwest ISO: (S.D. Ind.) filed 12/23/2011 by Indianapolis District Office - The Commission alleges that Charging Party was terminated during her short term disability leave because of her absence from work. CP had requested, and was granted, one month of leave as an accommodation of her post-partum depression. Under Defendant's short term disability leave policy, Charging Party was entitled to up to 90 days of paid leave. Near the conclusion of the month, CP's doctor ordered her to continue her leave for an additional month. Charging Party advised Midwest ISO's leave coordinator, and the coordinator indicated she would "update [CP's] records." Nevertheless, during the second month of leave, Midwest ISO terminated CP's employment. The termination was effective 8 days before Charging Party was released to return to work.

RESOLVED:

2012

Pioneer Place: (D. Or.) resolved 5/23/12 by San Francisco District Office - Charging Party applied for a cook position at Pioneer Place, an assisted living facility. Defendant informed her that she needed to pass a drug test before beginning work. Charging Party failed the drug test because of her epilepsy medication, and as a result, was not hired. Under the consent decree, Defendant will pay Charging Party $80,000. The company will also train all employees and managers on disability law, implement anti-discrimination policies on interviewing and hiring, and make annual reports to the EEOC for three years.

Garney Construction and Georgia Power: (N.D. Ga.) resolved 5/30/12 by St. Louis District Office - The Commission alleged that Defendant failed to hire Charging Party because of his disability, epilepsy. In addition to furnishing $49, 500 in monetary relief, Defendant will also re-disseminate policies on discrimination and provide training to its employees.

Vitas Healthcare: (S.D. Fla.) resolved 6/5/12 by Miami District Office - The Commission alleged that Vitas, a health care company, refused to reasonably accommodate an employee who had hypertension. As a hospice nurse, Charging Party was required to visit several nursing homes per day, which required extensive driving. The extensive driving exacerbated her condition, and Vitas refused her request to be reassigned to a position which did not require extensive driving. Defendant will pay $65,000 and amend its reasonable accommodation policy, as well as provide training.

Stevens Transport: (N.D. Tex.) resolved 6/7/12 by Dallas District Office - The Commission alleged that Defendant discriminated against Charging Party by failing to hire him because of his disability, paraplegia. Under the Consent Decree, Defendant will furnish Charging Party $50,000 in monetary relief.

Homestead Gardens, Inc.: (D. Md.) resolved 6/4/12 by Philadelphia District Office - The Commission alleged that Defendant discharged Charging Party because of his disability, hemophilia. Under the Consent Decree, Charging Party will receive

$50,000 in monetary relief, and Defendant will improve their policies and postings regarding discrimination. Defendant is also required to report to the EEOC.

Randstad US, LP: (D. Md.) resolved 5/9/12 by Philadelphia District Office - The Commission alleged that Defendant, an employment referral and placement services company, refused to hire or continue to recruit Charging Party because of his disability. Randstad had originally fast-tracked Charging Party's participation in the hiring process because of his qualifications, but reversed course when he disclosed that he had Asperger's Syndrome, an autism spectrum disorder. After telling Charging Party that the position had been put "on hold," Randstad continued to recruit job applicants for the position. Charging party received $60,000 in monetary relief, and the consent decree resolving the suit provided significant remedial relief.

Roadrunner RediMix: (D. N.M) resolved on 4/26/12 by Phoenix District Office- Charging Party was a cement driver with neck impairment. He requested that his employer allow him to be exempt from cleaning the inside of the concrete barrel of his truck once a year, or in the alternative, to use the jackhammer, which was used to remove the excess concrete, in a downward motion, as opposed to the typical upward, overhead motion. As a result, Defendant sent Charging Party home on unpaid leave, then terminated him. The consent decree compensated the Charging Party with $80,000 in monetary relief. The decree also enjoins Defendant from engaging in further disability discrimination and requires the company to implement discrimination policies and procedures, provide training to its managers and employees, and monitor and investigate discrimination complaints.

Personal Touch Home Care: (S.D. Ohio) resolved on 4/3/12 by Indianapolis District Office - The Commission alleged that Defendant was an Ohio-based home health care services provider with 50 locations in 13 states. Defendant discharged the Charging Party because of her disabilities: renal failure, COPD (chronic obstructive pulmonary disease) and asthma. The parties negotiated a two-year consent decree in which Personal Touch agreed to pay $35,000 in compensation and also agreed to provide training to all of its supervisors and managers in its Southwest Ohio region concerning disability discrimination.

Adams Jeep of Maryland, Inc.: (D. Md.) resolved 3/22/12 by Philadelphia District Office - The Commission alleges that Defendant harassed, failed to accommodate and discharged Charging Party because of her disability (bipolar disorder) and her record of disability. Defendant agreed to pay Charging Party $50,000, which represents back pay and compensatory damages. The Consent Decree requires that Defendant institute and distribute a written policy to all employees on disability discrimination and harassment, as well as provide training.

Family Video: (W.D. N.Y.) resolved on 3/14/12 by New York District Office - The Commission alleged that Defendant subjected Charging Party to harassment for Charging Party's major depression and social anxiety disorders. After Charging Party complained about this harassment, Defendant terminated Charging Party in violation of the ADA. Charging Party received $70,000 in monetary relief. The consent decree also enjoins Family Video from engaging in further disability discrimination or retaliation, and requires Family Video to hire an EEO coordinator to

implement discrimination policies and procedures, provide training, monitor and investigate discrimination complaints.

BRT Management Company, Inc. dba Buy-Rite Thrift Store and W. & J. Capitol and Mgt. Co., Inc. d//a Buy Rite Thrift Store: (N.D. Cal.) resolved 2/7/12 by San Francisco District Office - The Commission alleged that Defendant unlawfully discharged Charging Party after he experienced mild seizures at work. Rather than request a fitness exam or medical documentation of ability to perform job duties, Defendant relied on its own judgment to determine that Charging Party was a danger to himself and others. Defendant agreed to pay Charging Party $50,000.

Professional Media Corporation, d/b/a/ Your Health Magazine: (D. Md.) resolved on 2/2/12 by Philadelphia District Office - The Commission alleged that Defendant harassed and discharged a bookkeeper because of her disabilities, Attention Deficit Hyperactivity Disorder and Auditory Processing Disorder. The Commission further alleged that Defendant also violated the ADA when it required newly hired employees to sign a "health warranty" and state that they had no existing medical condition and did not take any drugs or narcotics for any medical, physical or psychological disorder as a condition of employment. This case straddled the effective date of the ADA. The consent decree settling the suit provided monetary relief of $58,000 to the terminated employee and enjoined the company from continuing its "health warranty" policy. The decree contains a three-year injunction with continuing jurisdiction provisions to enable the EEOC to ensure that Your Health will comply with the ADA.

United Insurance Company of America: (E.D. N.C.) resolved on 1/24/12 by Charlotte District Office- Charging Party is a recovering drug addict who has been enrolled in a methadone treatment program since 2004. Defendant offered Charging Party a position as an insurance agent, conditioned upon the result of Charging Party's drug test. After Charging Party's drug test showed the presence of methadone, he submitted a letter to Defendant from his treatment provider explaining that he was participating in supervised methadone treatment program and taking legally prescribed medication as part of the treatment. Upon receiving this information, Defendant notified Charging Party that he was not eligible for hire and withdrew its offer of employment. As part of the Consent Decree that ended the dispute, Charging Party received $37,500 as well as other remedial relief.

2011

G2 Secure Staff, LLC: (E.D. N.C.) resolved 11/9/11 by Charlotte District Office - The Commission alleged that Charging Party had end-stage renal disease, a condition in which his kidneys no longer functioned and he was not able to urinate. Defendant refused to provide an opportunity to take a drug test required for employment by means other than urinalysis. Charging Party was denied employment for failure to take the drug test and thus Defendant refused to accommodate him and failed to hire him due to his disability. The parties negotiated a consent decree which provides for $30,000 in monetary compensation to Charging Party and injunctive relief.

Fisher, Collins & Carter, Inc.: (D. Md.) resolved 6/20/11 by Philadelphia District Office - The Commission alleged that Defendant, Fisher, Collins & Carter, Inc. engaged in unlawful disability discrimination when it fired two employees shortly

after it discovered, through a questionnaire on employees' health conditions and medications, that they had both had diabetes and hypertension. Fisher, Collins & Carter, Inc. has agreed to pay $77,000 and furnish other remedial relief.

Verizon Maryland, Inc., et al: (D. Md.) resolved 7/6/11 by Philadelphia District Office -Verizon Communications agreed to pay $20 million and to provide significant equitable relief to resolve a nationwide class disability discrimination lawsuit. The suit said the company unlawfully denied reasonable accommodations to hundreds of employees and disciplined and/or discharged them pursuant to its "no fault" attendance policy. This lawsuit spanned over both the ADA and the ADAAA as the policy was in effect before the ADAAA became effective and continued thereafter.

Affiliated Computer Systems (ACS) and Alpha Rae Personnel: (N.D. Ind.) resolved 5/24/11 by Indianapolis District Office - The Commission alleged that Defendants, one a Xerox company and the other an employment agency, failed to accommodate Charging Party and terminated her work assignment with ACS and thus her employment with Alpha Rae, because of her vision and hearing disabilities caused by Fuchs' Dystrophy and by tinnitus. ACS agreed to pay Charging Party $55,000 and both defendants agreed to significant equitable relief including taking action to track and respond appropriately to requests for accommodation.

Finish Line: (M.D. Tenn.) resolved 6/3/11 by Indianapolis District Office - The Commission alleged that The Defendant, a national manufacturer and supplier of athletic apparel, denied the charging party a job transfer that she was fully qualified for as a reasonable accommodation and instead discharged her. The charging party has an impairment related to a right shoulder injury. The parties negotiated a consent decree which provides for $38,000 in monetary compensation to Charging Party and injunctive relief.

Starbucks Coffee Company: (W.D. Tex.) resolved by 8/16/11 by Dallas District Office - The Commission alleged that Defendant failed to provide Charging Party with a reasonable accommodation during training for a barista position and then refused to hire her because of her dwarfism disability. Starbucks agreed to pay $75,000 to Charging Party as well as to injunctive relief such as training.

ACT Teleconferencing Services: (D. Mass.) resolved 7/15/11 by New York District Office - The Commission alleged that Defendant, a provider of audio, web, and videoconferencing services, discharged Charging Party, an enhanced services specialist, because of her disability, concussion and back fracture, and because she required one additional month of leave. Defendant agreed to pay the Charging Party $40,000 in monetary relief.

Jewish Community Center of Greater Washington: (D. Md.) resolved 8/3/11 by Philadelphia District Office - The Commission alleged that Defendant, one of the largest metropolitan Jewish community centers in the country, failed to accommodate, demoted and discharged an assistant teacher because of her hearing impairment. The discharge occurred after the effective date of the ADAAA. Defendant agreed to pay $100,000 and provide injunctive relief to settle the case.

Maxim Healthcare Services: (D. Minn.) resolved 9/22/11 by Chicago District Office - The Commission alleged that Defendant failed to provide reasonable accommodates and ultimately discharged Charging Party, director of clinical

services, because she had brain cancer. Defendant agreed to pay $160,000 to Charging Party's estate as well as significant injunctive relief.

Dodge's Chicken Store: (W.D. Ark.) resolved 11/28/11 by Memphis District Office - The Commission alleged that Defendant, a convenient and gas station store that cooks and serves hot food to customers, failed to accommodate and discharged Charging Party because of her disability, a seizure disorder that restricted her ability to drive. Defendant agreed to pay $190,000 to settle the suit. In addition to monetary relief, the terms of the 30-month consent decree require that the defendants create a disability policy in its employee handbook for distribution to all its employees; provide for training under the ADA; maintain records of any disability complaints; provide reports to the EEOC; and post a notice to employees about the lawsuit that includes the EEOC's contact information.

Wal-Mart: (E.D. Tenn.) resolved 12/16/11 by Memphis District Office - The Commission alleged that Defendant, a discount convenience retail store, violated the ADA when it discharged Charging Party because of a cancer-related disability and retaliated against him for complaining about the discrimination. In its lawsuit, the EEOC charged that the company denied a 12-year employee a reasonable accommodation after he had cancer surgery, which left him with weakness in his right shoulder and fired him in retaliation for complaining about its refusal to accommodate him. Wal-Mart Stores Inc. agreed to pay $275,000 to settle a disability lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC). In addition to the monetary relief, the 18-month consent decree settling the suit enjoins Wal-Mart's distribution center from further failing to provide reasonable accommodation, absent undue hardship, or following proper procedures for handling such requests per the ADA and ADAAA. In addition, the decree requires that Wal-Mart provide anti-disability discrimination training to its management staff; maintain records of any accommodation requests and furnish them to the EEOC; and post a notice to employees about the lawsuit that includes the EEOC's contact information. Wal-Mart has revised and amended its accommodation policy, which it distributed to all employees, to address accommodation issues.

Journal Disposition Corporation: (W.D. Mich.) resolved 11/17/2011 by Indianapolis District Office - The Commission alleged that Defendant, a printing service and subsidiary of the newspaper publisher Journal Communications, Inc., failed to recognize its duty to accommodate under the ADA. Charging Party alleges that Defendant discriminated against him by terminating his employment while he was on short-term disability leave pursuant to an inflexible disability leave policy. Prior to the exhaustion of his leave, the employee returned back and began working part-time hours while he received chemotherapy. He was able to perform all of the essential functions of his job. When the employee's benefit was exhausted under the policy, the company summarily terminated him and made him eligible for rehire once he was able to work full-time. Journal Disposition, the former operator of IPC Print Services, Inc., agreed to settle the discrimination suit for $55,000. Since the employer no longer operated the facility, no other equitable relief was required.

SETTLEMENT AGREEMENT BETWEEN

THE UNITED STATES OF AMERICA

AND

JOSEPH DAVID CAMACHO, ESQUIRE, ALBUQUERQUE, NEW MEXICO

UNDER THE AMERICANS WITH DISABILITIES ACT

DJ # 202-49-37

Settlement • Department of Justice Press Release

BACKGROUND

1. This matter was initiated by a complaint filed under title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181 et seq., with the United States Department of Justice ("Department") against Joseph David Camacho, Attorney At Law, Albuquerque, New Mexico.

2. The complaint was filed by the National Association of the Deaf Law and Advocacy Center on behalf of Carolyn Tanaka, alleging that Mr. Camacho refused to secure a qualified sign language interpreter when necessary to ensure effective communication with her.

3. The NAD Law and Advocacy Center made the following allegations: Ms. Tanaka is deaf and uses sign language for communication. Ms. Tanaka retained Mr. Camacho as legal counsel in Tanaka v. University of New Mexico Hospital, et al., C. No: 04cv00645 in the United States District Court for the District of New Mexico. In that lawsuit, Ms. Tanaka alleged that the University of New Mexico Hospital failed to provide a qualified interpreter on numerous occasions during the admission of her son, K.T., then age six, to the hospital from April 30, 2002, through May 3, 2002. During the course of his representation of Ms. Tanaka, Mr. Camacho also failed to provide qualified interpreter services despite Ms. Tanaka's repeated requests. Instead, Mr. Camacho asked that Ms. Tanaka's then-nine-year-old son, K.T., "interpret" at appointments between Ms. Tanaka and Mr. Camacho. Ms. Tanaka refused to have her son act as an "interpreter" in these complicated legal matters. On or around September 2004, Mr. Camacho sent Ms. Tanaka Interrogatories and Request for Production of Documents for her to answer in connection with her complaint against the University of New Mexico Hospital. Ms. Tanaka had great difficulty understanding the Interrogatories and Request for

Production of Documents. Ms. Tanaka again requested a qualified interpreter so that she could effectively communicate with Mr. Camacho regarding how to answer the discovery requests. Mr. Camacho again refused to provide a qualified interpreter in order to communicate effectively with and assist Ms. Tanaka in answering the Interrogatories and Request for Production of Documents. On October 28, 2004, Mr. Camacho sent Ms. Tanaka a letter stating in part, "It is my understanding that you refuse to cooperate unless I provide you with an interpreter, which will cost me approximately eighty dollars an hour. I have never had to pay to converse with my own client. It would be different if you did not have anyone to translate for you. However, you have a very intelligent son who can do it for you. It appears that we are not able to work together. I believe that you should find another attorney as I am going to withdraw from this case." First, he contends that he represented her effectively and competently, and gave her the same quality of service that he provides to any other non-disabled client. On November 9, 2004, Mr. Camacho made a motion to withdraw as Ms. Tanaka's attorney, stating an "irreconcilable conflict." On December 20, 2004, Mr. Camacho's motion to withdraw was granted. The case against the Hospital was dismissed "due to her failure to respond to discovery."

4. Mr. Camacho disputes portions of Ms. Tanaka's allegations. He has submitted a statement to the Department contending that he was able to communicate effectively with Ms. Tanaka by means of written notes, e-mail, telephone relays and through the interpretation of Ms. Tanaka's nine-year-old son. He also points out that he hired an interpreter for the hearing on his withdrawal from Ms. Tanaka's case. To demonstrate that he communicated effectively with Ms. Tanaka, Mr. Camacho has submitted to the Department a list of pleadings that he prepared on Ms. Tanaka's behalf. He contends that he represented her effectively and competently, and gave her the same quality of service that he provides to any non-disabled client. Mr. Camacho maintains that he withdrew from the case because Ms. Tanaka stopped returning his phone calls and e-mail messages in connection with the discovery requests referred to above.

5. The Attorney General is authorized to enforce title III of the ADA. 42 U.S.C. § 12188(a)(2). In addition, the Attorney General may commence a civil action to enforce title III in any situation where the Attorney General believes a pattern or practice of discrimination exists or a matter of general public importance is raised. 42 U.S.C.§ 12188(b)(1)(B).

6. Title III specifically defines discrimination as, among other things:

> the failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids or services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden.

42 U.S.C. § 12182(b)(2)(A)(emphasis added); see 28 C.F.R.§§ 36.303. The ADA defines "auxiliary aids" to include, among other things, "qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments . . .." 42 U.S.C. § 12102(1). A public accommodation is required to furnish appropriate auxiliary aids and services where

necessary to ensure effective communication with individuals with hearing impairments. 28 C.F.R. § 36.303. The preamble to the regulation lists communications involving legal matters as an example of a type of communication that can be "sufficiently lengthy or complex to require an interpreter for effective communication." 28 C.F.R. pt. 36, App. B at 703 (2005).

7. The title III regulation defines "qualified interpreter" as "an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary." 28 C.F.R. § 36.104. The preamble to the definition of "qualified interpreter" explains:

> Public comment also revealed that public accommodations have at times asked persons who are deaf to provide family members or friends to interpret. In certain circumstances, notwithstanding that the family member or friend is able to interpret or is a certified interpreter, the family member or friend may not be qualified to render the necessary interpretation because of factors such as emotional or personal involvement or considerations of confidentiality that may adversely affect the ability to interpret "effectively, accurately, and impartially."

28 C.F.R. pt. 36, App. B at 684-685 (2005) (internal quotes in original).

PARTIES

8. The Parties to this Settlement Agreement ("Agreement") are the United States of America ("United States") and Joseph David Camacho, Esq.

9. Joseph David Camacho is an attorney in private practice, providing legal services, and therefore, a public accommodation under Title III of the ADA. 42 U.S.C. § 12181(7)(F); 28 C.F.R. § 36.104.

FINDINGS

10. The United States has investigated the allegations that Mr. Camacho failed to provide Ms. Tanaka with effective communication and finds the allegations meritorious.

11. To resolve this matter without further litigation, Mr. Camacho is willing to agree to the terms of this settlement agreement. In exchange, the United States agrees to terminate its investigation of this matter, without resorting to litigation, except as provided in paragraph 18.

12. In order to avoid litigation of the issues discussed herein, and in consideration of the mutual promises and covenants contained in this Agreement, the Parties hereby agree to the following:

REMEDIAL ACTION

13. Consistent with the ADA, Mr. Camacho will not discriminate against any individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of his private practice by refusing or failing to secure qualified interpreters when necessary to ensure effective communication with clients who are deaf and use sign language.

14. Mr. Camacho will adopt, maintain, and enforce the policy attached hereto, and by reference incorporated herein, as Exhibit 1 to this Agreement on effective communication with individuals with disabilities. Within ten (10) days of the effective date of this Agreement, Mr. Camacho will post of the policy in a conspicuous area of his law office where members of the public can readily read the policy. Within twenty (20) days of the effective date of this Agreement, Mr. Camacho will include in his business website (http://jdclawfirm.com) a statement of the policy.

MONETARY RELIEF FOR COMPLAINANT

15. The ADA authorizes the United States Attorney General to seek a court award of compensatory damages on behalf of individuals aggrieved as the result of violations of the ADA. 42 U.S.C. § 12188(b)(2)(B); 28 C.F.R. § 36.504(a)(2). Within thirty (30) days of the effective date of this Agreement, Mr. Camacho agrees to pay Carolyn Tanaka $1,000.00 in damages and to send a copy of this Agreement and Exhibits 2 and 3, hereto attached, to Ms. Tanaka by certified mail, return receipt requested, or by Federal Express. Ms. Tanaka must return an executed "Release of All Claims," Exhibit 3, to Mr. Camacho within thirty (30) days of receipt of said documents. Mr. Camacho will send the undersigned counsel for the United States a copy of Exhibits 2 and 3 when they are sent to Ms. Tanaka.

16. If Ms. Tanaka accepts Mr. Camacho's offer of relief as set out in Exhibits 2 and 3, Mr. Camacho will, within thirty (30) days of receipt of the signed "Release of All Claims," send Ms. Camacho, by certified mail, return receipt requested, or by Federal Express, a check for ONE THOUSAND DOLLARS ($1,000.00). Mr. Camacho will provide to the United States a copy of the check and transmittal letter sent to Ms. Tanaka.

ENFORCEMENT

17. If at any time Mr. Camacho desires to modify any portion of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, it will promptly notify the United States in writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. Until there is written agreement by the United States to the proposed modification, the proposed modification will not take effect. These actions must receive the prior written approval of the United States, which approval will not be unreasonably withheld or delayed.

18. The United States may review compliance with this Agreement at any time. If the United States believes that Mr. Camacho has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the United States for a modification of the relevant terms, the United States will so notify Mr. Camacho in writing and it will attempt to

resolve the issue or issues in good faith. If the United States is unable to reach a satisfactory resolution of the issue or issues raised within thirty (30) days of the date it provides notice to Mr. Camacho, it may institute a civil action in federal district court to enforce the terms of this Agreement.

19. Failure by the United States to enforce this entire Agreement or any provision hereof with regard to any deadline or any other provision herein will not be construed as a waiver of the United States' right to enforce other deadlines and provisions of this Agreement.

20. A copy of this document or any information contained in it will be made available to any person by Mr. Camacho or the United States on request.

21. This Agreement constitutes the entire agreement between the Parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement (including its Attachments, which are hereby incorporated by reference), will be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect Mr. Camacho's continuing responsibility to comply with all aspects of the ADA.

22. This Agreement shall be binding on Mr. Camacho, his agents and employees. In the event Mr. Camacho seeks to transfer or assign all or part of his interest in his law practice, and the successor or assign intends on carrying on the same or similar use of the facility, as a condition of sale Mr. Camacho's law practice shall obtain the written agreement of the successor or assign to comply with any obligations remaining under this Agreement for the remaining term of this Agreement.

23. This Agreement will remain in effect for three (3) years.

24. The effective date of this Agreement is the date of the last signature below.

FOR JOSEPH DAVID CAMACHO:

BY: _____
JOSEPH DAVID CAMACHO
Attorney At Law
2900 Louisiana Blvd., N.E., North Bldg.,
Suite C-1
Albuquerque, New Mexico 87110

FOR THE UNITED STATES:

WAN J. KIM
Assistant Attorney General
Civil Rights Division

BY: _____
JOHN L. WODATCH, Chief
PHILIP L. BREEN, Special Legal Counsel
RENEE M. WOHLENHAUS, Deputy Chief
ROBERT J. MATHER, Trial Attorney
Disability Rights Section - NYA Bldg.
950 Pennsylvania Ave., NW

Washington, DC 20530

Dated: _____

Dated: August 9, 2007

EXHIBIT 1

POLICY ON EFFECTIVE COMMUNICATION WITH INDIVIDUALS WITH DISABILITIES

To ensure effective communication with clients and companions who are deaf or hard of hearing, we provide appropriate auxiliary aids and services free of charge, such as: sign language and oral interpreters, note takers, written materials, assistive listening devices and systems, and real-time transcription services.

EXHIBIT 2
VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Marc Charmatz
Legal Director
National Association of the Deaf
Law and Advocacy Center
8630 Fenton Street
Suite 820
Silver Spring, Maryland 20910

Re: United States v. Joseph David Camacho D.J. No. 202-18-178

Dear Mr. Charmatz:

The United States and Joseph David Camacho have entered into a Settlement Agreement to resolve your complaint on the behalf of your client, Carolyn Tanaka, alleging disability discrimination. A copy of the Settlement Agreement is enclosed.

Pursuant to the Settlement Agreement, Joseph David Camacho hereby offers to settle your allegations against him, for the sum of ONE THOUSAND DOLLARS ($1,000.00). To

receive the monetary award, Ms. Tanaka must communicate your acceptance to Mr. Camacho by executing the enclosed "Release of All Claims" and returning it to him within thirty (30) days of your receipt of this letter. You must send the signed "Release of All Claims" by mail to:

JOSEPH DAVID CAMACHO
Attorney At Law
2900 Louisiana Blvd., N.E., North Bldg., Suite C-1
Albuquerque, New Mexico 87110

Sincerely,

_____
Joseph David Camacho

Encls.

EXHIBIT 3

RELEASE OF ALL CLAIMS
D.J. No. 202-49-37

For and in consideration of the acceptance of ONE THOUSAND DOLLARS ($1,000.00) offered to me by Joseph David Camacho pursuant to a Settlement Agreement between the United States of America and Joseph David Camacho: I, Carolyn Tanaka, release and forever discharge Joseph David Camacho, his subsidiaries, affiliates, insurers, successors and assigns, and its current, past, and future officers, directors, shareholders, employees, and agents, of and from all legal and equitable claims under, arising out of or related to our complaint, D.J. No. 202-49-37, disputed by and containing the allegation that Joseph David Camacho failed to provide effective communication in violation of the Americans with Disabilities Act. I further agree to file no further disciplinary complaints against Joseph David Camacho in connection with the matters described in the Settlement Agreement.

This Release constitutes the entire agreement between myself and Joseph David Camacho without exception or exclusion. This Release will be considered null and void in the event Mr. Camacho fails to deliver me a check in the amount of $1,000.00 within thirty (30) days of the date of this signed Release.

I acknowledge a copy of the Settlement Agreement between the United States and Joseph David Camacho has been made available to me. I further acknowledge that I have had the opportunity to review the terms of this Release with an attorney of my choosing and to the extent that I have not obtained that legal advice, I voluntarily and knowingly waive my right to do so.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this _____ day of _____, 2007

_____
Carolyn Tanaka

Sworn and subscribed to before me this

_____ day of _____, 2007.

_____ Notary public

My commission expires:_____

Return to Settlements

ADA Home Page

August 10, 2007