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Reasonable Accommodations for Employees with Disabilities

Three federal laws provide the primary protections for employees and job applicants with disabilities. First, Title I of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12111–12117, prohibits disability discrimination by employers with fifteen or more employees. Second, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, bars disability discrimination, including employment discrimination, by recipients of federal funding. Finally, Section 501 of the Rehabilitation Act, 29 U.S.C. § 791, prohibits disability discrimination in most federal employment. Under these laws (which, as relevant here, apply the same standards), illegal disability discrimination includes an employer’s failure to reasonably accommodate an employee or job applicant with a disability. An accommodation is any change to a job, the work environment, or an employer’s policies or practices to allow a person with a disability to apply for a job, perform job functions, or enjoy workplace benefits on equal terms with other employees.

This In Focus reviews the reasonable accommodations requirement. It explains who qualifies for accommodations, what the law requires of covered employers, and the limits on employers’ obligations. For more information about the ADA, see CRS In Focus IF12227, *The Americans with Disabilities Act: A Brief Overview*, by Abigail A. Graber.

Qualifying Employees and Applicants

To qualify for an accommodation, an employee or job applicant must have a disability. A person has a disability within the meaning of the ADA and Rehabilitation Act if he or she is actually disabled, has a history of disability, or is “regarded as” disabled. 42 U.S.C. § 12102(1). However, only people who are actually disabled or have a history of disability are entitled to reasonable accommodations. While the law protects people from adverse treatment on the basis of *perceived* disabilities (a business cannot refuse to hire someone it erroneously believes to have HIV/AIDS, for example), workers and applicants cannot receive accommodations for disabilities they do not, in fact, have.

A person with a disability has “a physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. § 12102(1). Congress has directed that this standard should be construed broadly. An impairment is any physiological or psychological disorder or condition. “Major life activities” include basic tasks and senses, such as walking, hearing, seeing, standing, or learning; and bodily functions, such as immune function, endocrine function, or neurological function. A person is “substantially limited” if he or she is limited in a major life activity compared to most people. Putting the pieces of the definition together, a disability includes any physiological

or psychological condition that impairs an aspect of a person’s functioning as compared to most people.

In addition to having a disability, an employee or applicant must be “otherwise qualified” for the job they seek or hold to receive an accommodation. 42 U.S.C. § 12112(b)(5). To be “otherwise qualified,” an employee or applicant must satisfy the prerequisites for the position, such as the necessary education, credentials, job experience, and the like. He or she must also be able to perform the “essential functions” of the position, at least if given a reasonable accommodation. 42 U.S.C. § 12111(8). The ADA and Rehabilitation Act protect employees and applicants when they need reasonable accommodations to do the core work of their jobs. A worker who cannot perform a marginal part of the job, even with an accommodation, can still seek legal protection. It may be a reasonable accommodation to assign that function to another employee, for example. Employees with disabilities are not “otherwise qualified,” however, if there is no accommodation that would enable them to perform the fundamental duties of the positions they hold or seek. They can then face the same consequences as other employees (such as firing or demotion).

Potential Accommodations

Accommodations can vary in their expense and complexity. One employee may need a stool for work usually done standing; another might ask an employer to adopt a new software package that is accessible to the blind. The Equal Employment Opportunity Commission provides general examples of potential accommodations, including:

[j]ob restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

29 C.F.R. § 1630.2(o)(2)(ii). This list is not the full universe of potential accommodations, nor is each accommodation on the list always required. The accommodation that is reasonable in any given case will depend on the facts, including the nature of the person’s disability, the particulars of the job, the structure of the work environment, and the resources of the employer.

When Employers Must Provide Accommodations

The ADA and Rehabilitation Act require workplace accommodations for disability. These laws do not require changes to address a problem outside of employment or unrelated to disability. Employers must provide only those

accommodations that are necessary for employees with disabilities to have equal workplace opportunity; employers need not provide accommodations that would put employees with disabilities on a superior footing.

Accommodations may be necessary in a variety of contexts. Employers must provide accommodations that enable job seekers to apply and employees to do their jobs. Employees with disabilities are entitled “to enjoy equal benefits and privileges of employment,” 29 C.F.R. § 1630.2(o)(1)(iii), so required accommodations go beyond the bare minimum of what would allow employees to accomplish their job duties. For example, an employer may have to provide accommodations to alleviate disability-related pain or discomfort at work, even if an employee is physically capable of working despite the problem. Employers may also have to accommodate employees to provide access to workplace perks and benefits, like employer-sponsored social functions, gyms, and parking spaces.

Congress placed limits on employers’ duty to provide accommodations. Employers do not have to provide accommodations that “impose an undue hardship on the operation of the business.” 42 U.S.C. § 12112(b)(5)(A). An “undue hardship” is “an action requiring significant difficulty or expense,” taking into account factors such as the cost, the employer’s resources, and the structure of the employer’s operations. 42 U.S.C. § 12111(10). For example, it might be reasonable for a large employer to reassign tasks to accommodate an employee with a disability, while a business with only a few employees may be unable to do so without unduly burdening its other workers or disrupting the workflow.

Undue hardships go beyond financial and administrative concerns. Changes that would fundamentally alter the job in question are undue hardships; employers need not excuse employees from performing the essential functions of their jobs (although in some circumstances job reassignment can be a reasonable accommodation). The law also does not require employers to fundamentally alter their businesses. For example, a retail employer may maintain hours of operation that coincide with when customers shop, even if an employee’s disability makes working those hours difficult.

Employers also need not tolerate a “direct threat,” which is “a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.” 42 U.S.C. § 12111(3). For example, if no reasonable accommodation would enable an applicant with a disability to safely operate a vehicle, an employer need not offer them a job as a driver.

An employee or applicant bears the burden to show that a particular accommodation is “reasonable,” that is, that it “seems reasonable on its face, *i.e.*, ordinarily or in the run of cases.” *US Airways, Inc. v. Barnett*, 535 U.S. 391, 401 (2002). The employer bears the burden to show that the accommodation presents an undue hardship or direct threat. Courts resolve these issues based on individualized facts.

The Interactive Process

When an employer learns an employee needs an accommodation, the parties engage in an “interactive process.” 29 C.F.R. § 1630.2(o)(3). This is an ongoing discussion between the employer and employee to determine the employee’s needs and what accommodation would be effective and reasonable. An employee ordinarily triggers the employer’s duty to begin the interactive process by requesting an accommodation. Employers do not have to accommodate disabilities that they do not know about, although sometimes a person’s need for an accommodation is so obvious that the employer must start the interactive process even without a request.

Courts generally hold that employers may ask for documentation adequate to show the employee’s disability and need for an accommodation, if this information is not obvious. Employers may not require medical or personal information irrelevant to the accommodation request.

During the interactive process, employers and employees should share information in good faith. Courts would likely expect that if an employer rejects a particular accommodation, the parties would then try to find a workable alternative. Employers need not provide the precise accommodation an employee requests, nor the most optimal accommodation, so long as the accommodation offered is effective.

Considerations for Congress

Outside of the disability context, most federal employment discrimination laws require only that employers refrain from taking adverse actions against employees on the basis of protected characteristics, such as race or sex. The ADA and Rehabilitation Act require more: employers must remove barriers to workplace equal opportunity for people with disabilities. Employers may incur financial and administrative costs to comply. Some may be eligible for certain tax credits and deductions to help compensate for such expenses; there are no other major federal programs providing dedicated assistance to employers to directly defray the costs of accommodations. Congress could consider additional avenues to help employers reasonably accommodate employees with disabilities, whether via the tax code, grant programs, or other means.

Additionally, for the most part the ADA and Rehabilitation Act enact general rules applying to all disabilities and all covered employers. Regulations have historically provided more specific guidance. Congress could legislate rules for certain contexts, whether those be particular disabilities, such as communicable diseases; accommodations, such as leave requests or telework; or employment settings, like health care. COVID-19, for example, raised questions about how the reasonable accommodation requirement should apply in a pandemic. *See* CRS Legal Sidebar LSB10573, *COVID-19 Vaccination Requirements: Potential Constraints on Employer Mandates Under Federal Law*, by April J. Anderson and Victoria L. Killion; CRS Legal Sidebar LSB10471, *COVID-19 and Workplace Liability: Selected Issues Under Antidiscrimination Laws*, by April J. Anderson. Congress could clarify existing rules or adopt new ones regarding reasonable accommodations.

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