

Asking for Accommodations under the ADA

The Federal anti-discrimination law, The Americans With Disabilities Act [ADA] of 1990, allows people with a disability to ask for accommodations from an employer. The law states that an employer should provide accommodations that make it possible for a person with a disability to do the job. The only reason an employer may not provide the accommodations is that providing them would cause an undue hardship to the employer.

The anti-discrimination provisions of the ADA mean that you may ask for accommodations and expect that nothing negative will happen as a result. You should be able to be accommodated without feeling as if you are asking for special treatment or favoritism. An employer may not make you feel as if your accommodations are a problem or personal gifts that may be taken away if they don't like you or you don't behave in a particular way. Accommodations are provided as part of your civil rights as an employee, and you are entitled to them. You don't want to approach the employer with an arrogant attitude, but don't apologize either, for asking for what you need.

To make the law practical and usable, you should know several aspects of asking for accommodations:

- Why you should ask
- When to ask
- Whom to ask
- How to ask
- What to say

What an Employer Does and Does Not Have to Do

- An employer does not have to create a job that fits you. An employer must offer you a vacant position in an equivalent job that you are qualified to do, if one exists and if doing the equivalent job will provide an effective accommodation. An example is offering an inside sales job instead of an outside sales job, so you can have access to a bathroom.
- If an equivalent vacant position does not exist, and you cannot do you the essential functions of your old job, the employer must offer you any lower grade vacant positions. If no lower grade position is vacant, an employer does not have to continue offering accommodations.

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- An employer does not have to provide exactly the accommodation you ask for, but only an accommodation that deals effectively with your disability. If you want a particular desk close to the bathroom, but an employer offers you another almost as close, that is a reasonable accommodation.
- An employer does not have to accept the more expensive of two solutions to your needs.
- An employer may have to spend money to accommodate you, such as providing a piece of equipment or office furniture, modifying your computer, allowing you to take time off that necessitates hiring a temporary worker.
- Your employer is not required to guess that you have a disability, to anticipate your needs or to accommodate you retroactively. The only way to activate your legal rights to accommodation is to ask for them.

Why You Should Ask for Accommodations

Ask for accommodations if you need some help in getting your job done or you need to change or stop doing some aspect of your job. Some common accommodations people living with illness might need are:

- Time off to attend doctors' appointments
- Regular meal and break times
- Quick and easy access to bathrooms
- Part-time or flex-time schedules
- Less fatiguing work
- Unpaid leave

Don't ask for accommodations to get a promotion, stop doing a part of the job you dislike [that is a personnel issue], to get away from a particular manager [another personnel issue], or for special favors.

Ask for accommodations only if your inability to do the task is related to your disability, your medication or its side effects.

When to Ask for Accommodations

Ask for accommodations only when you know you need them. Do not ask in anticipation of needing them sometime in the future. Don't say, "I'll probably need to take some extra time off sometime, is that okay?"

You probably should not ask for accommodations during the interview process. You have rights only as an *applicant* prior to getting a job offer but you have the full rights of an *employee* after the job offer. Ask for accommodations after the job offer, when your relationship is more firmly established and you are more clearly covered by disability anti-discrimination laws.

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Don't ask in the interview		Do ask after you have been hired
<i>Applicant status</i>	Job offer	<i>Employee status</i>

You won't know all the details of your job during the interview, so you won't know exactly what kinds of accommodations you might need. For instance, if your desk is close to the bathrooms, you won't need to ask to be closer.

Ask for accommodations when it is clear that some aspect of the job is not possible for you and you know, or have an idea, of how to change that aspect.

Don't wait until you have gotten into trouble to ask for accommodations. Your legal rights only start when you officially notify your employer of the existence of a disability and your need for accommodations. They may not apply retroactively if you have performed inadequately, even if your poor performance is due to your disability.

If you have taken a lot of time off to see doctors, arrived at work late, over-used your sick leave, your employer may take disciplinary action against you, such as a warning or putting you on probation.

Don't try to say, "You can't put me on probation – I was late because I am a person with a disability and I was absent because I was seeing the doctor and late because my disability-related fatigue made me oversleep. You are discriminating against me as a person with a disability." This probably will not work as a discrimination defense against the employer's actions, because you did not inform the employer of your need for accommodations or of the fact that you have a disability.

Whom to Ask for Accommodations

Ask a person who has the power to make the changes you need. This may not be the person directly above you in supervision, but the person one or even two levels above your supervisor. If you need a change in schedules, ask the person who authorizes the schedules, not just the person who makes them out. If you need different equipment, ask a manager who can authorize those purchases.

You may also want to ask someone in Human Resources to help in negotiating your accommodations and to help the managers understand what their legal obligations are. You can also bring in an ADA consultant to help negotiate for you.

Remind everyone whom you tell about your condition and need for accommodation that this is confidential information and may not be given out without your permission, and that all written material about it should be kept separately, with limited access. The only people who may have access to medical information are managers and supervisors about

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work restrictions and necessary accommodations; first aid and safety personnel if your disability might require emergency treatment; government agencies investigating ADA compliance; state workers' compensation offices; and insurance companies.

An employer may not tell your co-workers about your HIV status on the basis that they might encounter your blood or body fluids during an accident or emergency. All employers should be instructing employees in universal precautions to be used by everyone and for everyone, regardless of what medical information is known.

How to Ask for Accommodations

Every time an employee says, "Boss, can I speak to you for a minute?" an employer's first response will be, "Uh oh, here comes a problem." Understand that even the most reasonable of requests for accommodation will be seen as a demand upon the employer.

To make it easier to make your request successfully,

- Remember that for an employer, change is annoying and time-consuming.
- Decide whom you are going to approach with your request for accommodation.
- Pick a time when you can speak privately for more than a few minutes.
- State your problem clearly without blame.
- Make it clear that you are asking as a person with a disability for an accommodation. You don't have to use technical words.
- You don't have to go into details about your disability or your diagnosis.
- Propose a solution to the employer when you bring up the problem. Don't expect the employer to be an expert in what your disability needs are or how to solve them.
- If the employer asks for verification of your disability, which they are entitled to do, provide a letter from your physician [see sample at the end]. Your doctor does not have to state your diagnosis, just that you are a person with a disability and that the doctor requests the accommodation you are asking for. Obviously, you should discuss your work situation with your doctor ahead of asking for an accommodation, in case a letter is needed.
- Be willing to negotiate and be flexible about the accommodations. If you refuse an accommodation offered by the employer, you can lose your job unless you can prove that the accommodation offered would not accommodate your disability.
- When you and the employer have decided together what to do, make sure that the arrangements are written down and a copy is in your Human Resources file, with a copy for you to take home. [Don't keep your copy in your desk.]
- If your employer doesn't write down what is agreed upon, you write it down. If you can, get the employer to sign it. If you can't get a signature, you might want to use a sentence like:

"This will document the arrangements agreed upon by [manager's name] and myself to accommodate my disability. Unless I hear from you to the contrary by [date], I will assume that this is an accurate description of our agreement and acceptable to you."

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- Remind the employer, HR representative and the manager that the information about your disability is confidential information and you expect it to be kept that way by all parties.
- If the employer/manager says that other employees must be told to keep them from wondering why you are being given special consideration, suggest something like this wording:

“We are giving [employee name] some help to manage a problem he’s having, so he’ll be out on Wednesday mornings for a while. I’m sure if you needed some help, you’d want the same kind of consideration, so let’s make sure we have the department covered while he’s out of the office.”

What to Say in Asking for an Accommodation

Don’t say, “I can’t do this job, you have to help me.”

Do say, “I’m having trouble managing the irregular times of the department’s lunch breaks. I’d like a regularly scheduled lunch hour. Could I fill in for someone from 11:30 to 12:30, so I can have my lunch at 12:30 every day?”

Don’t say, “Jack’s such a bad manager, he never lets us have the schedule more than a day in advance, and that doesn’t work for me because I have to take my medications, so I need you to tell him to straighten up the office schedule, so I can eat lunch every day at noon.”

Do say, “I have a disability that I take medications for, and I have to keep to a pretty consistent schedule. Can you help me make an arrangement with Jack so that I can eat lunch every day at noon?”

Don’t say, “I have colitis, I’ve had it for a while now and I’m on my second set of medications and I’m still having a lot of diarrhea, it’s like five times a day, and I’m really tired all the time, I’m not sleeping well, I’m up half the night lots of the time, so I don’t know how I’m going to manage this job...”

Do say, “I have a condition which is making me very tired these days, so I’m going to need a different schedule, with fewer hours. Can you talk to me about what would work best for the group and I can tell you about what I think would work for me. I’d really like to come in after 10 am.”

Don’t say, “You can’t ask me to do all these different jobs, it’s too stressful. Don’t you know I have cancer?”

Do say, “The disability I told you about makes it important that I limit my stress. I saw that a job in the other department is open and I think I could handle that one well. Will you help me make a transfer, as an accommodation?”

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The EEOC manual states, "If a job applicant or employee has a hidden disability--one that is not obvious--it is up to that individual to make the need for an accommodation known" (Section 3.6). If the need for accommodation does arise, disability awareness and reasonable medical documentation can help facilitate the process. Reasonable accommodation is addressed in the EEOC enforcement guidance on reasonable accommodation and undue hardship (October 2002).

"A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act." may be accessed at <http://www.jan.wvu.edu/links/ADAtam1.html> and the addendum is available at http://www.eeoc.gov/docs/adamannual_add.html

The EEOC enforcement guidance "Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act" may be accessed at <http://www.eeoc.gov/docs/accommodation.html>

For further information on disability awareness go to <http://www.jan.wvu.edu/links/disres.htm#DisAware>

For further information on medical documentation, go to <http://www.eeoc.gov/ada/adahandbook.html#medical>

For further information on accommodating individuals with hidden disabilities, contact JAN's toll-free hotline at 1-800-526-7234 (Voice/TTY).

References

1. Americans with Disabilities Act (ADA), 1990, 42 U.S.C. §12101
2. Rules and Regulations of the Equal Employment Opportunities Commission, 29 CFR Part 1630, Equal Employment Opportunities for Individuals with Disabilities, specifically Section 1630.2 (o) Reasonable Accommodations
3. Job Accommodation Network, janweb.icdi.wvu.edu
4. AIDS Law, 3rd edition, edited by Betsy Johnson, AIDS Legal Referral Panel of SF, 1995
5. The U.S. Equal Employment Opportunity Commission, *The ADA: Your Employment Rights as an Individual With a Disability* at <http://www.eeoc.gov/facts/ada18.html>

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Sample physician letter A supporting a request for accommodations

Date

J. J. Jones, MD
1234 Market Street
San Francisco, CA 94111

*[note that the MD should not identify the diagnosis
in the practice name, such as Jones HIV/AIDS
Clinic]*

RE: Patient name
ID: Patient medical identification number

Employer
Human Resource Manager
XXXXXXX
City state zip

Dear HR Manager,

As *Patient's* physician, I verify that he is a person with a disabling medical condition that requires a work accommodation. His disability causes a need for frequent bathroom breaks, sometimes with little notice. Please provide a workspace for him reasonably close to bathroom facilities and accommodate his need to use them frequently.

He also has fatigue as a side effect of his medications. Please work out an acceptable flexible schedule for no more than 32 hours per week, allowing time for medical appointments. Your cooperation is appreciated.

Thank you,

J Jones, MD

Cc: Patient medical file
Patient
Patient's attorney, vocational counselor, ADA consultant

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Sample physician letter B supporting a request for accommodations

A Jones, M.D.¹
1234 Street Street
San Francisco CA 94100
April 1, 2001

S Smith, Human Resources Manager²
XYZ Employer Inc.
5678 Avenue Avenue
San Francisco CA 94100

RE: Patient Name J Doe
Patient ID No.

Dear M. Smith,

My patient, J Doe, is a person with a disability who requires accommodations to perform the essential functions of his/her job. I am requesting that you work with M. Doe to provide accommodations for the following limitations.³ This information is confidential and should be disclosed only to supervisors who need to assist in the provision of accommodations.

M. Doe's gastro-intestinal problems necessitate frequent, sometimes urgent trips to the bathroom. M. Doe's disability and medications often cause fatigue, so that s/he is limited to working no longer than 1.5-2 hours without a break. Rest periods of 20 minutes should allow M. Doe to continue to work an eight/six/four-hour day.

M. Doe's medication schedule necessitates regular mealtimes. We would appreciate your help in allowing M. Doe to maintain a regular lunchtime and breaktime schedule. M. Doe's medical appointments take approximately two mornings every two weeks. Your assistance in arranging M. Doe's duties to permit attendance at these appointments is appreciated.

Patient and I would like to remind you that this information is confidential and should only be made known to essential personnel and only with the knowledge of *Patient*. I will be glad to work with you further if you have any questions. Thank you for your cooperation.

Sincerely,

A Jones, M.D.

Notes

1. Doctor's stationary and return address should not include any indication of the disease category, i.e, **NOT** *City AIDS Clinic*.
2. Send this information to a high level manager who can be expected to know how to handle the question of accommodations, not to a direct supervisor. Send the letter to a specific person or allow the patient to hand it directly to an appropriate recipient.
3. Specify the body system and its problem, not necessarily the diagnosis, and the limitation in functioning. Suggest appropriate accommodations if known.

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Additional suggested phrasing for common functional limits

Headaches or other pain:

- *Patient* suffers headaches approximately twice per week, requiring breaks of 30-45 minutes to allow medication to take effect.
- *Patient* may need to work reduced hours per week depending on the incidence of headaches.

Neuropathy:

- *Patient* is limited in the amount of standing and walking s/he can manage. Please accommodate *Patient's* need to stand no more than 10 minutes at one time, up to 5 periods per day, and to walk no more than 15 minutes at one time, up to a total of one hour per day.
- *Patient* has reduced sensation in the fingertips. Please allow *Patient* to avoid the necessity of handling coins or other small objects.

Memory/cognition:

- *Patient* needs instructions in writing, clear deadlines and may require reminders to meet deadlines.
- Follow oral instructions with confirming memos.
- Agreements made in meetings should be confirmed with minutes or memos.
- Make expectations clear and include behavioral standards, such as: you are expected to complete 10 interviews within each calendar week.

Schedule:

- The side effects from medications are causing a need for an accommodation in the form of modification of *Patient's* schedule.
- *Patient* starts work at 6:30 am. He needs a break between 7:00-7:30 am. His regular breaks will continue to be between 9:00-9:15 am and 1:45-2:00 pm, with lunch at 11-12 noon. He will extend his workday by ½ hour, from 3:30-4:00 pm, so that he can continue to work a full day.

Fatigue:

- *Patient* needs to work [*choose appropriate phrases*] a shortened work week, a short day, only 6 hours per day, a maximum of two hours without a break.
- *Patient* needs to take breaks every 1.5 hours for a minimum of 15 minutes.
- *Patient* needs to work during daytime hours only, a regular schedule, no earlier than 10:00 am.
- *Patient* may need an extended break of 30-45 minutes to sleep between each four-hour work period.

Diarrhea/gastrointestinal:

- *Patient* needs to work in a location allowing frequent/easy access to bathroom facilities
- *Patient* needs an extended lunch hour to accommodate gastrointestinal problems

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- *Patient* needs frequent breaks in schedule, sometimes on an irregular basis, to go to the bathroom.

ADHD or other attention/learning disability problems:

Patient will need:

- Permission to tape record staff and weekly supervision meetings, other meetings and conversations, including those with other employees and external customers. *Patient* should be provided with a tape recorder.
- Written rather than oral staff meeting minutes, written agendas for supervision meetings, goals, objectives, updates, expectations, changes, deadlines, assignments and schedules.
- Permission to request clarification, summarizing, repeating or rephrasing of verbal or written information to ensure *Patient's* understanding, without prejudice.
- Communication with supervisor on business topics to be conducted by e-mail.
- Accommodation in timing and scheduling to allow *Patient* to check spelling and grammar. *Patient* may need to ask for a third party to assist in this function.
- Flexible schedule to allow for medical and other appointments to deal with his/her disability, without prejudice. Specifically, this currently involves time off on Wednesday mornings, with an extension of *Patient's* workday into Wednesday evening. This may involve use of FMLA leave times.
- Time to refocus when interrupted.