

# What is Reasonable Accommodations

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A reasonable accommodation is any change in the workplace that enables a qualified individual with a disability to enjoy equal employment opportunities. What is reasonable will depend on the facts and circumstances of a particular situation. Reasonable accommodation may include modifying work schedules, making physical changes to the worksite or equipment, adjusting supervisory methods, modifying a workplace policy, restructuring a job, providing a job coach, and/or reassigning an employee to a vacant position for which (s)he is qualified. Reasonable accommodation does not require lowering performance standards or removing essential functions of the individual's job. Also, accommodations which would impose an undue hardship on the University do not have to be provided.

The keys to providing successful accommodations include having a clear definition of a particular job's essential functions, an understanding of how the person's disability may affect her/his performance of those essential functions, and on-going direct communication between the employee and the supervisor. It is critical to involve the person who has the disability in the process of identifying and assessing possible accommodations. While the preferences of the individual with a disability should be carefully considered, the primary criterion for determining if an accommodation is reasonable is whether or not it is effective in allowing the person to perform essential job duties. Since limitations caused by psychiatric disabilities vary widely among individuals, and since the functions of University jobs differ widely, effective accommodations must be determined on a case-by-case basis. Creativity and flexibility are also important tools in the process of meeting the

## EXAMPLES OF TYPICAL JOB ACCOMMODATIONS

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| Maintaining stamina during the workday  | <ul style="list-style-type: none"><li>• Provide flexible scheduling</li><li>• Allow job sharing or redistribution of work</li></ul>   |
| Difficulty concentrating                | <ul style="list-style-type: none"><li>• Reduce distractions in the work area</li><li>• Divide large assignments into smaller tasks</li></ul>  |
| Staying organized and meeting deadlines | <ul style="list-style-type: none"><li>• Use calendar to mark meetings and deadlines</li><li>• Make daily to-do lists and check items off as they are completed</li></ul>  |
| Misinterpreting work assignments        | <ul style="list-style-type: none"><li>• Give written job instructions</li><li>• Write clear expectations of responsibilities and consequences of not meeting them</li><li>• Encourage questions and open communication</li><li>• Provide regular and frequent meetings with the employee to discuss workplace issues, changes and work performance expectations</li><li>• Provide directions in a consistent manner</li></ul> |

## **How will employers know if current workers or applicants have psychiatric disabilities?**

Psychiatric disabilities are generally not apparent. Further, the ADA prohibits employers from asking applicants if they have psychiatric disabilities before making a job offer. Examples of pre-employment questions **not allowed** under the ADA include the following:

- Have you ever been hospitalized?
- Have you had a major illness in the last five years?
- Have you ever been treated by a psychiatrist or psychologist?
- How many days were you absent from work because of illness last year?
- Are you taking any prescribed drugs?

In order to determine whether applicants are qualified, the screening process should clarify the essential functions of the job, then seek evidence that the potential employee has the needed skills, work experience, education or other qualifications. Given these guidelines, employers are unlikely to know if an applicant has a psychiatric disability unless he or she chooses to discuss it. For example, a worker might decide to disclose that he/she has a disability in order to request a workplace accommodation. But most workers with psychiatric disabilities don't require accommodations. Applicants and employees are often deterred from discussing their disabilities with employers by the very severe stigma associated with psychiatric disorders in our society. Disclosure is a personal decision on the part of the worker that involves many factors including trust, comfort with others in the workplace, job security, and the perceived open-mindedness and support of the immediate supervisor.

## **It's a Mad, Mad World--the EEOC's Guidance on Psychiatric Disabilities and the Americans with Disabilities Act** By *Benton J. Mathis* of Freeman Mathis & Gary, LLP

- Stress alone may, under certain circumstances, be a "mental impairment"

Employers may require that an employee be evaluated, at the employer's expense, by a health care professional chosen by the employer if such an examination is "job-related and consistent with business necessity"

Employers may require an applicant or employee to provide "reasonable documentation" describing the applicant or employee's psychiatric disability and resulting functional limitations

Employers may be required to excuse violations of workplace conduct rules which are not "job-related and consistent with business necessity" as to a particular position if committed by an individual with a psychiatric disability

Employers must make individualized assessments regarding individuals with disabilities, their abilities to perform certain jobs, and the risk of their posing a direct threat

Employers must maintain documentation of requests for reasonable accommodation for either one year from the date of the resulting personnel action or for one year from the date the record is made, whichever is later

### **How An Employer May Learn Of An Applicant or Employee's Psychiatric Disability**

#### **A. Pre-Offer**

As with any other disability, an employer may not ask any questions likely to elicit information about a psychiatric disability before the employer has made an offer of employment. This includes asking an applicant whether he or she has a disability or whether he or she will need reasonable accommodation for the job. Therefore, it is unlikely that an employer will be aware of an applicant's psychiatric disability at the application stage unless the applicant voluntarily discloses such information.

There are, however, exceptions which allow an employer to inquire about an applicant's disability at the application stage. One exception is when the employer reasonably believes, before making the job offer, that the applicant will need accommodation to perform the functions of the job. This could happen in two circumstances: (1) when the applicant has a visible disability, and (2) when the applicant with a non-visible disability voluntarily discloses the disability or voluntarily tells the employer that he or she will need reasonable accommodation to perform the job.

In the unlikely event of the second situation, an employer may ask the applicant whether he or she needs reasonable accommodation and, if so, what type of reasonable accommodation would be needed to perform the job. For example, if an applicant asks to be allowed to take a required typing test in a quiet area due to a "medical condition," the employer may require that the employee provide documentation to verify the exist-

tence of the disability and which describes the functional limitations and the need for accommodation. 8 Daily Lab. Rep. at 466. The applicant and the applicant's family and friends may also provide information about the applicant's functional limitations. 8 Daily Lab. Rep. at 466 n.34.

## **B. Post-Offer**

The more likely scenario, however, is that the employer will offer a job to an applicant with a psychiatric disability of which the employer is unaware. Post-offer, the employer may learn of the employee's psychiatric disability through either the employee's voluntary disclosure of it, the employee's voluntary request for reasonable accommodation, the employee's responses to a post-offer medical questionnaire, or the results of a required post-offer medical examination. Post-offer medical questionnaires and examinations need not be job-related, but must be required of all new employees in the same job category. An employer may use the results of such questionnaires and medical examinations to justify revoking the disabled employee's job offer, but only if the exclusionary criteria are "job-related and consistent with business necessity, and cannot be met with reasonable accommodation." 8 Daily Lab. Rep. at 466 n.37.

After an employee has been working, an employer may not inquire about a psychiatric disability or require a medical examination unless to do so is "job-related and consistent with business necessity." This could happen in at least four situations: (1) an employee with a psychiatric disability requests reasonable accommodation, (2) an employer believes, based on objective evidence, that an employee's ability to perform essential job functions will be impaired by a medical condition or that an employee will pose a direct threat due to a medical condition, (3) such inquiries are required by another federal law or regulation, or (4) the employee holds a public safety position and periodic medical examinations, narrowly tailored to address specific job-related concerns, are required by business necessity. The Guidance emphasizes that the inquiries or examinations "must not exceed the scope of the specific medical condition and its effect on the employee's ability, with or without reasonable accommodation, to perform essential job functions or to work without posing a direct threat." 8 Daily Lab. Rep. at 466 (emphases removed). Therefore, employers must take care to inquire only as to specific behaviors or activities, and necessary and proper medical examinations similarly must be very limited.

## **C. What Can the Employer Tell Other Employees?**

Reasonably accommodating an employee with a psychiatric disability may at times become noticeable to other employees, despite an employer's best efforts to the contrary. Employers must remember that they may not tell other employees how, when, or whether they are providing particular employees with reasonable accommodations. An employer may only say that it is complying with federal law or acting for legitimate business reasons.

## **III. Reasonably Accommodating An Employee With A Psychiatric Disability**

Employers should be aware that an employee or an employee's "representative," at any time during employment, may request reasonable accommodation for the employee by using "plain English" and need not mention the ADA or the term "reasonable accommodation." As with any reasonable accommodation request

under the ADA, in a psychiatric disability situation the only requirements for such a request are that the employer be notified that the employee (1) needs an adjustment or change at work (2) for a reason related to a medical condition. 8 Daily Lab. Rep. at 468. Note that although the request need not be in writing, the employer must keep records of such requests for one year from either the date such record is made or the date of the resulting personnel action, whichever is later. 8 Daily Lab. Rep. at 468 n. 50 (citing 29 C.F.R. § 1602.14).

In the psychiatric disability arena, something as simple as a request for time off because an employee is "depressed and stressed" is sufficient, according to the Guidelines, to put an employer on notice that the employee needs reasonable accommodation (a change at work due to a medical condition). However, if the employee's need for such accommodation is not obvious under the circumstances, the employer may ask the employee to provide "reasonable documentation" which explains the employee's disability and functional limitations. Note that an employer may request no more than "reasonable documentation," which is the minimum necessary to determine whether the employee has a disability and resulting functional limitations. For example, "the employer may ask the employee to sign a limited release allowing the employer to submit a list of specific questions to the employee's health care professional about his condition and need for reasonable accommodation." 8 Daily Lab. Rep. at 469. In the alternative, the employer may require that the employee go to "an appropriate health professional of the employer's choice," at the employer's expense, if such an examination is job-related and consistent with business necessity. Another alternative is to have the employer's chosen health professional consult with the employee's health professional, with the employee's consent. 8 Daily Lab. Rep. at 469 n.55.

The Guidance emphasizes that particular reasonable accommodations for individuals with psychiatric disabilities must be determined on a case-by-case basis, considering the specific workplace, job, and people involved. Suggested resources for the employer contemplating reasonable accommodation include mental health professionals and the Job Accommodation Network. Of course, an employer is not required to lower standards or remove essential functions of the job as part of reasonable accommodation. 8 Daily Lab. Rep. at 470 n. 62.

Examples of reasonable accommodations for individuals with psychiatric disabilities include (1) changes to workplace policies, procedures, or practices, (2) physical changes to the workplace or obtaining extra equipment; (3) time off or modified work schedules; (4) adjusting supervisory methods; (5) providing a job coach; and (6) reassignment to a different position. These are no different from the types of reasonable accommodations previously suggested and explored for individuals with non-psychiatric disabilities. Of course, as with any ADA reasonable accommodation, such accommodations are not required if they cause the employer "undue hardship." Note, however, that reassignment to an equivalent or, if unavailable, lower-level position must be considered if reasonable accommodation is not possible. Alternatively, the employer and employee may agree that reassignment is preferable to accommodation in the employee's current position. 8 Daily Lab. Rep. at 470-71.

#### **IV. Workplace Conduct Rules and Psychiatric Disabilities -- Special Considerations**

The Guidance's most interesting and significant discussions appear in its sections addressing workplace conduct rules. Employers may, in certain circumstances, be required to excuse violations of certain workplace conduct rules by individuals with psychiatric disabilities.

The Guidance explains that employers may discipline individuals with psychiatric disabilities when they violate workplace conduct standards, even if the misconduct resulted from the individual's psychiatric disability, but only if the conduct standard "is job-related for the position in question and is consistent with business necessity." 8 Daily Lab. Rep. at 471. According to the Guidance, workplace rules prohibiting violence, threats of violence, theft, and destruction of property are always appropriate when applied equally to all employees. Any other conduct standards, such as dress codes and coworker courtesy rules, must be evaluated for job-relatedness and consistency with business necessity for the particular position in question.

Workplace conduct standards which are found to be job-related and consistent with business necessity for the particular job in question are appropriate if applied to all employees. However, reasonable accommodation to enable an employee with a psychiatric disability to meet such standards in the future is required. For example, a librarian who shouts at patrons and coworkers, thus violating workplace conduct rules because of his disability, may be properly disciplined until he reveals his disability to his employer and requests reasonable accommodation. After such disclosure and request, the employer must reasonably accommodate the employee in the future, but need not revoke any discipline imposed thus far.

If the workplace conduct standards in question are not job-related and consistent with business necessity for the particular position in question, an employee who violates them due to a psychiatric disability must not be disciplined for such violations. For example, a warehouse worker with no customer contact who violates the company dress code due to a psychiatric disability should not be disciplined if the employee's noncompliance was due to his psychiatric disability, because the dress code rule is not job-related and consistent with business necessity for an isolated warehouse worker. Apparently, this is true regardless of whether the employee reveals his or her disability before or after disciplinary action