



Assistive Technology and the Interactive Process of Employer Accommodations

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Learning Outcomes

1. Participants will state what the ADA interactive process is.
2. Participant will briefly describe assistive technologies to enhance productivity in a work setting.
3. Participants will describe how the interactive process on job accommodations can involve assistive technology demonstrations.

The Americans with Disabilities Act (ADA) & The Assistive Technology Act (AT)

The Americans with Disabilities Act of 1990 (ADA) as amended in 2008 is civil rights legislation relating to other federal statutes and regulations including the Assistive Technology Act as amended in 2004.

The purpose of the ADA is for the elimination of discrimination against individuals with disabilities through Federal oversight and enforcement of standards.

The goal of the AT Act is to provide assistive technology to persons with disabilities, so they can more fully participate in education, employment, and daily activities on a level playing field with other members of their communities.

Individuals who are Covered

DISABILITY.—The term ‘disability’ means, with respect to an individual—

- (1) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (2) a record of such an impairment; or
- (3) being regarded as having such an impairment.

Accommodations for covered individuals with disabilities

People in the first two categories or “prongs” are entitled to accommodations.

Individuals regarded as having a disability are not entitled to a reasonable accommodation.

The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer.

The ADA Interactive Process

The interactive process, is how the employer and employee work together to arrive at a reasonable accommodation



Interactive Process on ADA Accommodations

The Ninth Circuit Court of Appeals addressed the interactive process in depth, noting that “the interactive process is a mandatory rather than a permissive obligation on the part of employers under the ADA and . . . this obligation is triggered by an employee or an employee’s representative giving notice of the employee’s disability and the desire for an accommodation.”

(Barnett v. U.S. Air, Inc., 228 F.3d 1105 , 9th Cir. 2000).

* The interactive process is individualized and will vary from worker and work place.

The Ninth Circuit Court of Appeals decisions govern the Western states



The interactive process begins when an employee informs his employer of his disability.

When an employee requests a reasonable accommodation in response to the employer's discussion or evaluation of the person's performance, the employer may proceed with the discussion or evaluation, but also should begin the "interactive reasonable accommodation process" by discussing with the employee how the disability may be affecting performance and what accommodation the employee believes may help to improve it.

Responsibility for ADA Accommodations

The employer has responsibility to begin the interactive process and may ask if the employee reporting a disability is seeking an accommodation.

Together the employer and the employee will explore whether an accommodation is necessary.

Together the employer and the employee will also explore what are the essential functions of the job.

Reasonable Accommodation Follow Along

The employer is not required to provide an accommodation requested by an employee and may select an accommodation that is reasonable and effective for the employee to accomplish the essential functions of the job.

Once the accommodation is provided the employer cannot interfere with the accommodation, yet may wish to monitor the effectiveness of the accommodation to accomplish the essential job functions.

The employee may reject the accommodation provided by the employer; however the employee must still perform all of the essential job functions without the accommodation.

Reasonable Accommodations for applicants and employees are required under the ADA

Title I of the Americans with Disabilities Act requires an employer to provide reasonable accommodation to individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship.

Undue Hardship

"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.

An employer must assess on a case-by-case basis whether a particular reasonable accommodation would cause undue hardship.

What is a reasonable accommodation?

A reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity.

An equal employment opportunity means an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to an average similarly-situated employee without a disability.

The ADA requires reasonable accommodation in three aspects of employment.

- 1) to ensure equal opportunity in the application process,
- 2) to enable a qualified individual with a disability to perform the essential functions of a job, and
- 3) to enable an employee with a disability to enjoy equal benefits and privileges of employment.

When it doesn't work

Employers are not required to eliminate the essential functions of a job, but they need to be sure what are essential.

Sometimes, there are no reasonable accommodations for the effects of some disabilities. Some examples include employee violence, permanent leave requests outside of FMLA requirements, erratic tardiness or attendance issues, unpredictable sleeping on the job and safety issues.

Disciplinary action and disability "revelations" should continue while engaging in the interactive process and possibly offering future accommodations.

Modification of a job performance or conduct standard can be a reasonable accommodation for someone with a disability. However, complete and permanent exemption usually is not. It can be withdrawn or modified if in practice they do not allow the employee to perform the essential functions of his/her job or become an undue burden to the employer.

Examples of Reasonable Accommodations

Making existing facilities accessible; job restructuring; part-time or modified work schedules; acquiring or modifying equipment; changing tests, training materials, or policies; providing qualified readers or interpreters; and reassignment to a vacant position.

Ergonomic Chair



iPad



Right-Hand Keyboard

Assistive Technology as Reasonable Accommodations in Work Settings

A follow-up survey (Gamble et al., 2006) of 646 employers who had contacted the Job Accommodation Network (JAN) for accommodation information was conducted in 2004. Over 25% of the accommodations provided were for the purchase or modification of a product or equipment.

Vocational Rehabilitation Questions.

1. Does the employer need help finding or suggesting an accommodation?
2. Does the employer accommodation seem to be appropriate and acceptable?
3. Is the employer claiming undue hardship for an accommodation?
4. Has information about tax incentives been shared with the employer?
5. Will additional VR resources be needed or considered?
6. After consideration of a reasonable accommodation, will the applicant/employee be able to perform the essential functions with or without an accommodation?
7. Follow-up: Is the accommodation effective?
8. Follow-up: Have any changes occurred in ability, environment, or job duties?
9. Follow-up: Do additional accommodations need to be considered?

Assistive Technology Act of 1998 as amended

PUBLIC LAW 108–364—OCT. 25, 2004 118 STAT. 1707

(C) DEVICE LOAN PROGRAMS.—The State shall directly, or in collaboration with public or private entities, carry out device loan programs that provide short-term loans of assistive technology devices to individuals, employers, public agencies, or others seeking to meet the needs of targeted individuals and entities, including others seeking to comply with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

Device Demonstrations

“(i) IN GENERAL.—The State shall directly, or in collaboration with public and private entities, such as one-stop partners, as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801), demonstrate a variety of assistive technology devices and assistive technology services (including assisting individuals in making informed choices regarding, and providing experiences with, the devices and services), using personnel who are familiar with such devices and services and their applications.”

Training and Technical Assistance

(I) IN GENERAL.—The State shall directly, or provide support to public or private entities with demonstrated expertise in collaborating with public or private agencies that serve individuals with disabilities, to develop and disseminate training materials, conduct training, and provide technical assistance, for individuals from local settings statewide, including representatives of State and local educational agencies, other State and local agencies, early intervention programs, adult service programs, hospitals and other health care facilities, institutions of higher education, and businesses.



- ✓ Demonstrating AT devices from our inventories of approximately 4000 AT-related products.
- ✓ Lending out devices for short term use.
- ✓ Consulting with clients to help them select and obtain technology that matches their unique needs
- ✓ Operating an online equipment re-use program
- ✓ Providing affordable financial loans to help people buy the technology they need
- ✓ Offering training, educational programs and technical assistance