



Webinar

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Prevent Discrimination Claims

How to Accommodate Disability in Your Workplace

COMBINED



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**Frost
Brown Todd**
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BEFORE WE BEGIN



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We will do Q&A at the end.



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The information in this presentation is intended for informational purposes only and should not be considered legal advice.

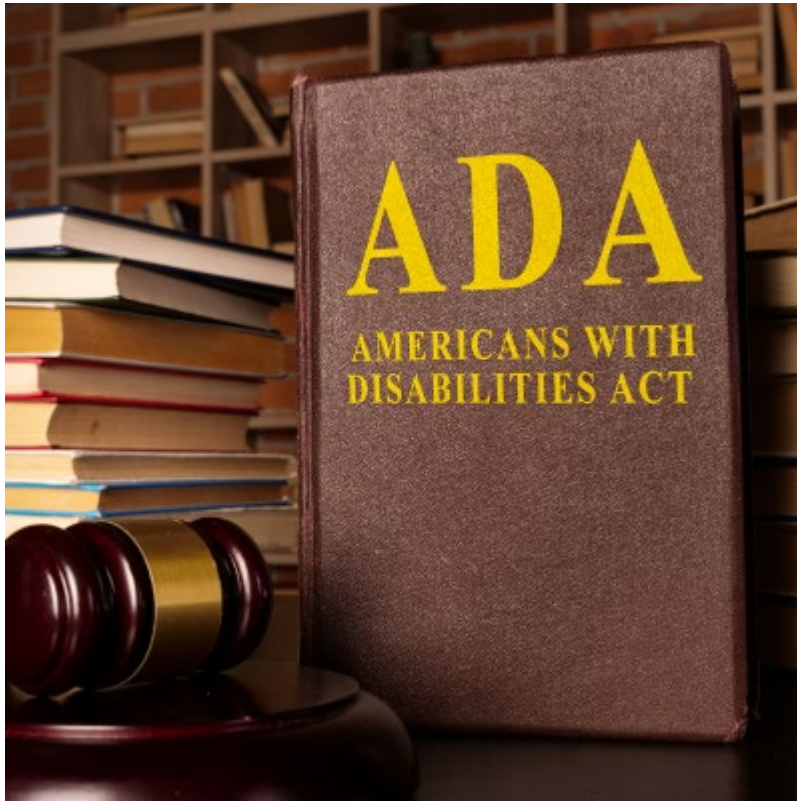
You are strongly encouraged to consult your own legal counsel to ensure compliance with applicable law in your specific state, municipality or jurisdiction.



Topics:

- > Americans With Disabilities Act (ADA)
- > Types of ADA Claims
- > Definition of Disability
- > Reasonable Accommodation: Definition, and Process
- > Strategies for Achieving Successful Reasonable Accommodation Outcomes

Americans With Disabilities Act



- Prohibits discrimination against a qualified individual with a disability due to his/her disability
- Mandates reasonable accommodation



Prevalence of Claims

Types of Claims

ADA Claims

- Failure to Accommodate
- Discrimination
- Harassment
- Retaliation
- Whistleblower Claims—New and Dangerous

Who is a qualified individual with a disability?

- Disability under the ADA
- Qualified for position
- Able to perform essential functions of position with or without a reasonable accommodation

Definition of Disability

Can meet definition of “disability” in one of three ways:



Physical or mental impairment that substantially limits one or more major life activities or major bodily functions



Record of such an impairment (i.e., history of cancer)



Regarded as having such an impairment (i.e., wrongfully assume Jack had cancer)

In most situations, the employee/applicant will be considered disabled

Major Life Activities

- caring for oneself
- performing manual tasks
- seeing
- hearing
- eating
- sleeping
- walking
- standing
- lifting
- speaking
- breathing
- learning
- reading
- concentrating
- thinking
- communicating
- bending
- working

** not exhaustive*

Major Bodily Functions

- the immune system
- normal cell growth
- digestive bowel
- bladder
- neurological
- brain
- respiratory
- circulatory
- endocrine
- reproductive

** not exhaustive*

What is a Reasonable Accommodation?

Generally, a change to the job environment or to customary processes that enable a qualified disabled individual to enjoy equal employment opportunity:

- Modification of the employee's job duties
- Modification to the job environment or a job-related process
- Reassignment to a vacant position

What is a Reasonable Accommodation?

Accommodations must be reasonable

- Feasible, plausible
- Effective at meeting the individual's needs
- Enable the employee to perform essential job functions

What is not reasonable?

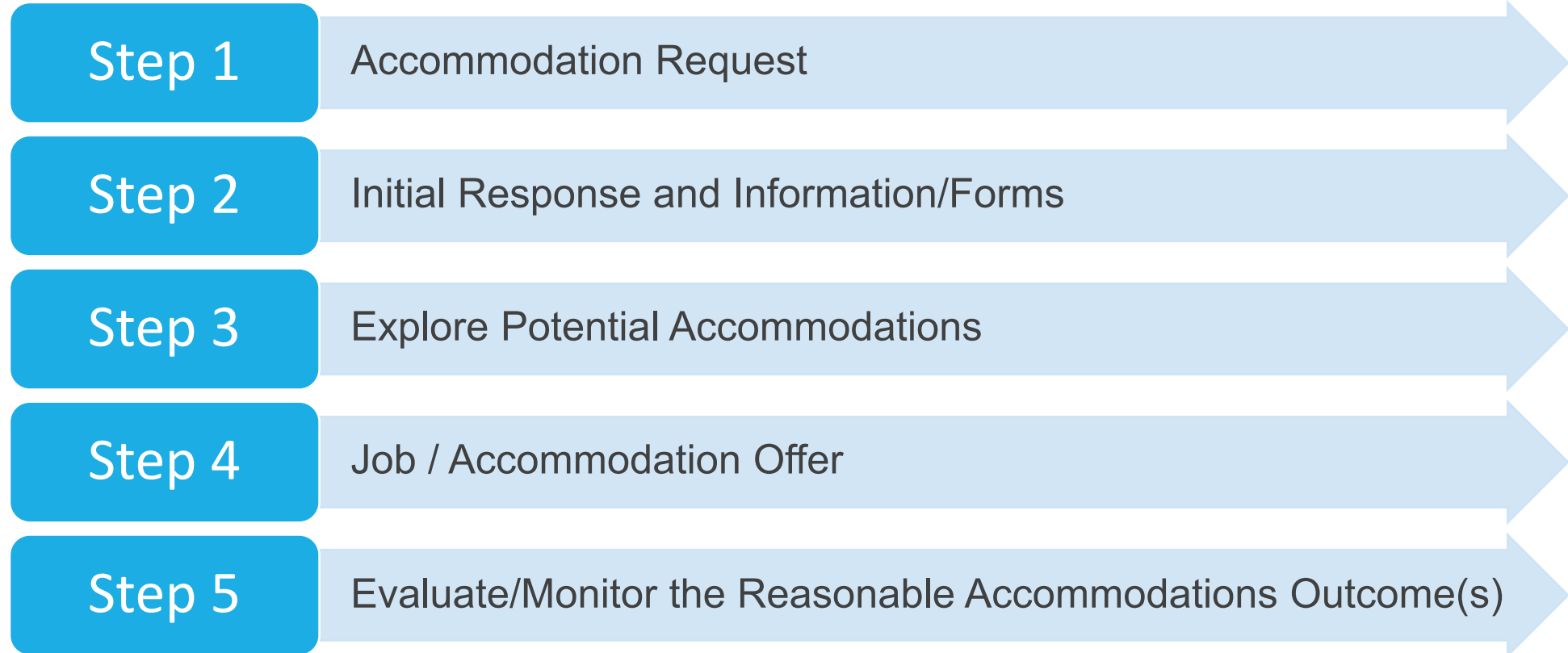
- Should not pose Undue Hardship
 - Financial difficulty when considering the size/finances of company
 - Unduly extensive, substantial, or disruptive
 - Fundamentally alter the nature or operation of the business

What is a Reasonable Accommodation?

What is not reasonable?

- Need not eliminate an essential function
- Need not create a new position
- Need not bump another employee
- Need not reassign to job for which employee is not qualified
- Need not risk employee posing direct threat to health/safety of himself or others

Reasonable Accommodation Process



Document the Entire Process

Step 1

Accommodation Request

- Accommodation Policy?
- No Magic Words Required
- Supervisors notify HR immediately

Step 2

Initial Response and Information/Forms

- ADA and Accommodation Overview
- Medical Questionnaire
 - Limitations on ability to perform major life activities?
 - Needed work restrictions and/or accommodations?
 - Anticipated duration of medical condition, limitations or accommodations?
 - Leave of absence?
 - Return to work date?
 - Can the employee perform the essential functions?
- Job Description

Step 3

Explore Potential Accommodations

- Review documentation and physician recommendations
- Interactive dialogue with employee
- Research various types of accommodations (JAN)
- Analyze accommodations in relation to essential job functions
- Input from supervisor
- Review accommodations provided to others

Step 4

Job / Accommodation Offer

- Make accommodation offer in writing
- Examples:
 - Modify work schedule
 - Leave of absence
 - Job-restructuring (non-essential tasks)
 - Job reassignment to vacant position
 - Modify supervisory methods (no requirement to change a supervisor)
 - Telecommuting
 - Purchase/modify work equipment

Step 5

Monitor the Reasonable Accommodation

- Follow up with individual
- Follow up with supervisor
- Re-evaluate and re-adjust as necessary

Maintain Confidentiality

- All medical information kept confidential
- Separate file
- Not disclosed to co-workers (medical information/particular accommodation)
- Supervisors may be told about necessary work restrictions and necessary accommodations – not the medical condition
- First-aid and safety personnel

ADA Landmines

- Failure to engage in an interactive dialogue
- Different treatment of “good” and “bad” employees
- Poor job descriptions
- Quick decision-making before doing homework
- Failure to document

Difficult Scenarios

Unrealistic Requests

The “Never Ending
Leave”

Suspicious
Certifications/Second
Opinions

Strategies for Achieving Successful Reasonable Accommodation Outcomes*

1

Collaboration is the key to identifying effective accommodations. Effective accommodations are a match between the needs of the employee and the requirements of the job.

2

Trust is the basis for clear communication between employee and employer. Without it, employees may hesitate to identify their accommodation needs to improve work performance; and employers may attribute performance problems to other factors not related to a disability.

*Adapted from Mid-Atlantic ADA Center.

Strategies for Achieving Successful Reasonable Accommodation Outcomes

3

Successful accommodations are measured by both suitability (enhanced ability to perform the essential functions of the job) and satisfaction (positive response to the outcome).

4

Investment of time is important in the provision of accommodations. Each accommodation request should be considered on an individual basis and requires ongoing communication and collaboration between the employee and the employer.

Strategies for Achieving Successful Reasonable Accommodation Outcomes

5

Optimizing the value of employees to the organization is the desirable outcome of the accommodation process. Accommodations are tools to enhance job productivity.

6

A proactive approach to workplace supports, including accommodations, leads to positive experiences for all employees. Accommodations should be viewed within the larger context of universal design and return on the investment in human capital.

Strategies for Achieving Successful Reasonable Accommodation Outcomes

7

Workplace accommodation policies and procedures should be clear and explicit. Supervisors need additional training and assistance in understanding and implementing accommodations.

8

Utilize credible resources such as the Job Accommodation Network when analyzing possible accommodations.

Strategies for Achieving Successful Reasonable Accommodation Outcomes

9

Emerging information technologies, such as project meeting and planning software, video communications and social networking, may be accommodation solutions for employees with disabilities that will also maximize the performance of all employees.

Any Questions?



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Save the date: Tuesday, July 25th

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