

**Americans with Disabilities Act:
Responding to Requests for Reasonable
Accommodations**

Rosemary G. Kenyon and
Megan P. Black
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ADA: Responding to Requests for Reasonable Accommodations



Rosemary G. Kenyon, Rkenyon@smithlaw.com

Rose Kenyon is a partner in Smith Anderson's Employment and Labor Law Practice Group. Rose's practice involves all aspect of employment and labor law counseling and litigation, across a wide variety of industries and companies, both public and private. Rose is a frequent speaker on emerging employment and labor law trends and regularly conducts training for human resources professionals and executive management. Prior to joining Smith Anderson, Rose served for 13 years as in-house counsel for Carolina Power & Light Company (now known as Duke Energy), having served as Deputy General Counsel.



Megan P. Black, Mblack@smithlaw.com

Megan Black is an associate in Smith Anderson's Employment and Labor Law Practice Group, and joined the firm in January 2011. Megan assists client in complying with state and federal employment laws. Her experience includes assisting clients in developing effective employment practices and policies and advising employers regarding wage and hours laws, leaves of absence, hiring and termination issues, OSHA matters, and other issues arising in the employment context.



ADA: Responding to Requests for Reasonable Accommodations

Focus Today:

How to respond when:

- When an individual employee has a physical condition that impacts performance, or
- When an individual employee requests an accommodation



Key Employer Obligations under the ADA

- Do not discriminate
- Provide reasonable accommodations when required
- Limit medical inquiries
- Keep information confidential

ADA Amendments Act of 2008, effective January 2009. Greatly expanded scope of covered disabilities. It lowers the threshold for what is a disability, specifies new classes of life activities that must be considered, covers conditions that are episodic, in remission, or mitigated by treatment and expanded the definition of who may be “regarded as” disabled.

The result is that employers must shift their focus to the rest of the analysis and, in particular, the interactive process to determine whether a reasonable accommodation is available.

Genetic Information Nondiscrimination Act (“GINA”) was enacted in 2008, and effective in 2009. EEOC Final rules issued in 2010.

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The Interactive Process

What is it?

- An *interactive*
- *process* by which an employer determines
- specific obligations under the ADA
- with respect to an *individual*



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What triggers this obligation?

- Employee request?
 - Employee performance?
 - Indirect information?
- **Supervisors must be trained to recognize when the ADA is triggered (and FMLA)**



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Step One: Initiate the Process

- Recognize when to begin and assign responsibility
 - Manager/ supervisor must limit discussions with employee and refer issue to HR
 - HR should be responsible for interactions with employee and leading the process
- **Adhere to confidentiality requirements under the ADA, FMLA and GINA**



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Step Two: Collect facts

- HR should collect information:
 - How did the condition come to the attention of the company?
 - Has management and the employee already headed down a particular path (e.g., informal accommodation, friction, etc.)?
 - Are there performance issues?
 - Has the employee been communicating with others in the company or third party benefit administrators about the condition in connection with absences or leaves (e.g., sick leave, FMLA, STD, etc.)?



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Step Three: Identify the essential functions of the position

→ Consider these factors:

- Employer’s judgment on what are essential functions
- Written job descriptions
- Amount of time spent performing a function
- Work experience of incumbent or others in the job



Definition of Essential Functions (EEOC regulation (excerpts))

(n) *Essential functions* –

- (1) *In general.* The term essential functions means the fundamental job duties of the employment position the individual with a disability holds or desires. The term “essential functions” does not include the marginal functions of the position.
- (2) A job function may be considered essential for any of several reasons, including but not limited to the following:
 - (i) Because the reason the position exists is to perform that function;
 - (ii) Because of the limited number of employees available among whom the performance of that job function can be distributed; and/or
 - (iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.
- (3) Evidence of whether a particular function is essential includes, but is not limited to:
 - (i) The employer’s judgment as to which functions are essential;
 - (ii) Written job descriptions prepared before advertising or interviewing applicants for the job;
 - (iii) The amount of time spent on the job performing the function;
 - (iv) The consequences of not requiring the incumbent to perform the function;
 - (v) The terms of a collective bargaining agreement;
 - (vi) The work experience of past incumbents in the job; and/or
 - (vii) The current work experience of incumbents in similar jobs.

[\(29 C.F.R. § 1630.2\(n\) \(2012\)\)](#)

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Step Four: Request medical documentation for the physical condition

- HR should send a letter to the employee's treating physician, with a copy to the employee, requesting:
 - What is the nature of the condition?
 - How does this condition impact the employee's daily activities, both on a personal basis and at work?
 - How long will the condition last, including how long the employee will be subject to any restrictions on daily activities?



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Step Four: Request medical documentation on the physical condition (cont'd)

- Is the employee able to perform the essential functions of the job?
- What limitations, if any, should be placed on his/her work activities?
- How long will these work-related restrictions be in place?
- What accommodations, if any exist, that would enable the employee to perform the essential functions of her job?



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Step Five: Evaluate whether an additional medical assessment is necessary

→ Evaluate information from the physician and determine whether it is sufficient

Common problems:

- Legal conclusions without factual support (i.e., concludes “disabled” under the ADA)
- Recommends specific reasonable accommodations without diagnosis or description of limitations



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Step Five: Evaluate whether an additional medical assessment is necessary (cont'd)

- Generalist provides opinion on condition within a recognized specialty area
- Employer just does not believe it (i.e., employee has visible symptoms/limitations and physician says no problems)

→ **An employer may obtain a second opinion**

- Employer must pay



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Step Six: Determine whether the employee has a covered disability

- Evaluate information from the physician and determine whether the employee has a covered disability under the ADA



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Step Seven: Determine whether employee is able to perform the essential functions

- Evaluate information from the physician and determine whether the employee is able to perform the *essential functions* of the job
 - Does the condition actually impact the performance of usual duties?
 - Can the employee perform the essential functions of the job?
 - If not, the employee is *not qualified for the position*



Definition of Qualified Individual (EEOC regulation)

To be a qualified individual under the ADA, one must:

- Have the skills, experience, education and other job-related requirements necessary for the position.
- Be able to perform the essential functions of the job with or without a reasonable accommodation.

[\(29 C.F.R. § 1630.2\(m\) \(2012\)](#)

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Step Eight: Determine whether a reasonable accommodation is necessary

- Determine if a reasonable accommodation is necessary to allow the employee to perform the essential functions of the job
 - If an accommodation is possible, it is required unless it causes “undue hardship” to the employer
 - The employer decides which accommodation will be adopted, and the employee is not entitled to his preferred accommodation
 - It is never a reasonable accommodation to eliminate an *essential function*



EEOC guidance on Reasonable Accommodations (excerpts):

Title I of the ADA “requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship. . . . There are three categories of “reasonable accommodations”: “(i) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or (ii) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or (iii) modifications or adjustments that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.”

EEOC guidance on Undue Hardship (excerpts):

“The only statutory limitation on an employer’s obligation to provide “reasonable accommodation” is that no such change or modification is required if it would cause “undue hardship” to the employer. “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. The ADA’s “undue hardship” standard is different from that applied by courts under Title VII of the Civil Rights Act of 1964 for religious accommodation.”

See: *EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the ADA*: www.eeoc.gov/policy/docs/accommodation.html

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Step Nine: Interact with the employee

→ HR should communicate with the employee, in writing, about the review and options:

- Employee's status
- Whether accommodations are being provided and if not, why not
- If accommodations are being provided, describe conditions and circumstances, including duration and required medical updates
- Provide employee an opportunity to respond



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Step Ten: Monitor

- HR should continue to monitor and assess whether accommodations are working or whether other issues are being addressed appropriately
 - Monitor performance just like any other employee
 - Coach supervisors



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Thank you!

- **Rose Kenyon**

- Partner
- 919-821-6629
- Rkenyon@smithlaw.com



- **Megan Black**

- Associate
- 919-821-6631
- Mblack@smithlaw.com



**Please Plan to Join us for Our Next Webinar:
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Labor Standards Act?**

*Presented by
Susan Parrott and Kerry Shad*

June 13, 2013 • 12 to 1 pm

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