

ADA ACCOMMODATION FLOWCHART[©]

The Americans with Disabilities Act (the “ADA”) applies to employers with 15 or more employees. The ADA prohibits employment discrimination against “**qualified individuals with disabilities.**”¹ Under the ADA, an employer must accommodate a disabled employee unless the accommodation would impose an “undue hardship” on the employer. The following questions are designed to assist you in determining how to meet your Company’s ADA accommodation obligations regarding a disabled employee.

1. Given the employee’s restrictions, can he/she perform all of the duties of his/her **current** position?
 - ▶ If yes, then the employee stays in his/her current position.
 - ▶ If no, then are the duties that he/she cannot perform **essential**² to the position?
 - ▶ If no, then the employee stays in his/her current position and the non-essential functions are either not performed or they are reassigned to other employees.
 - ▶ If yes, then is there any sort of **accommodation**³ that would allow the employee to perform those essential duties?⁴
 - ▶ If yes, then are those accommodations **reasonable**?⁵
 - ▶ If yes, then the employee stays in his/her current position with the aid of the reasonable accommodation(s).
 - ▶ If no, then proceed to question 2.
 - ▶ If no, then proceed to question 2.

¹ A “qualified individual with a disability” is an individual with a disability who meets the skill, experience, education, and other job-related requirements of a position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of the job.

² When determining whether a given duty is “essential” to a particular position, consider: 1) does the position exist to perform the duty; 2) are there other employees who can perform the duty, or among whom the duty can be distributed; 3) was the person hired to fill the position because of his/her particular expertise in performing the duty; 4) the amount of time spent performing the duty; and 5) the consequences of not requiring the individual to perform the duty.

³ Accommodations may include: 1) making the work facility readily accessible to and usable by the employee; 2) modified work schedules; and 3) obtaining or modifying equipment and devices that would allow the employee to perform the essential duty at issue.

⁴ The process of determining if an accommodation exists must be interactive between the employee and employer. That is, the employer and the employee must work together to attempt to identify an appropriate accommodation. Therefore, when determining if an accommodation exists, the first step should be to consult with the employee to determine if he/she can recommend an accommodation. If no accommodation is suggested, the next step is to send a request to the employee’s health care provider for him/her to compare the employee’s restrictions against the employee’s job duties and recommend any appropriate accommodation. If an accommodation is still not identified, then an outside entity may be consulted to compare the employee’s restrictions against his/her job duties and determine if any accommodation exists.

⁵ Whether an accommodation is reasonable must be determined on a case-by-case basis. Factors to be considered include: the cost of the accommodation; the financial resources available to the Company; and the impact of the accommodation on other employees’ ability to perform their jobs.

2. If the employee cannot perform an essential duty of his/her current position, with or without an accommodation, is there a position equivalent to the employee's current position (in terms of pay, status, etc.) for which the employee is qualified and which is vacant or will be vacant within a reasonable amount of time? (This does not require creating a new position, a promotion, overriding a collective bargaining agreement, or bumping another employee.)
 - ▶ If no, proceed to question 3.
 - ▶ If yes, then given the employee's restrictions, can he/she perform all of the duties of the position?
 - ▶ If yes, then the employee must be placed in that position.
 - ▶ If no, then are the duties which he/she cannot perform essential to the position?
 - ▶ If no, then the employee is placed in that position and the non-essential duties are either not performed or are reassigned to other employees.
 - ▶ If yes, then is there any sort of accommodation that would allow the employee to perform those essential duties?
 - ▶ If yes, then are those accommodations reasonable?
 - ▶ If yes, then the employee is placed in the position with the aid of the reasonable accommodation(s).
 - ▶ If no, then proceed to question 3.
 - ▶ If no, proceed to question 3.
3. If the employee cannot perform an essential duty of his/her current position, with or without an accommodation, and if there is not an equivalent position available, is there a nonequivalent position for which the employee is qualified and which is vacant or will be vacant within a reasonable amount of time?
 - ▶ If no, proceed to statement 4.
 - ▶ If yes, then given the employee's restrictions, can he/she perform all of the duties of the position?
 - ▶ If yes, then the employee must be placed in that position.
 - ▶ If no, then are the duties which he/she cannot perform essential to the position?
 - ▶ If no, then the employee is placed in that position and the non-essential duties are either not performed or are reassigned to other employees.
 - ▶ If yes, then is there any sort of accommodation that would allow the employee to perform those essential duties?
 - ▶ If yes, then are those accommodations reasonable?
 - ▶ If yes, then the employee is placed in the position with the aid of the reasonable accommodation(s).
 - ▶ If no, then proceed to statement 4.
 - ▶ If no, proceed to statement 4.
4. Determine whether or not the employee may take a leave of absence from work, as a "reasonable accommodation," or under the Family Medical Leave Act.