

REASONABLE ACCOMMODATION IN EMPLOYMENT

A Fact Sheet from the Minnesota Disability Law Center.

This fact sheet discusses Federal Law and Minnesota State Law only. This information does not constitute legal advice as each case is different, and because the law is constantly subject to change.

1. How do I know if I meet the definition of disability?

The Americans with Disabilities Act (ADA) defines disability as:

- a. A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- b. A record of such an impairment; or
- c. Being regarded as having such an impairment. *See*, 42 U.S.C. § 12102(2).

The Minnesota Human Rights Act (MHRA) defines a disabled person as 'any person who

- (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities;
- (2) has a record of such an impairment; or
- (3) is regarded as having such an impairment. *See*, Minn. Stat. § 363.01, Subd. 13.

The U.S. Supreme Court held in 1999 that a person is not disabled if the disabling condition can be corrected through the use of medications, glasses, or the like. Therefore, to fit the definition of disability under any of the three prongs, a person must be able to list disabling conditions which, even when corrected, still substantially limit a major life activity. For example, the medications may have side effects; diabetes, although controlled with medications, may require certain dietary restrictions or accommodations the failure of which would result in experiencing insulin shock; a person may still have seizures with significant results even though they are taking medications, etc.

2. Does the employer have fifteen or more employees?

Only employers who have fifteen or more employees are required to provide reasonable accommodations under the ADA and the MHRA. These fifteen employees can be full-time or part-time; they can work in the same or different facilities owned and operated by the same company; but the company must employ at least fifteen employees.

The standard for what constitutes fifteen employees is fairly loose. Both Minnesota law and federal law describe this requirement as: “A number of part-time or full-time employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. . . equal to, or greater than fifteen (employees) effective July 1, 1994.”

3. Does the employer know about the disability?

The employer must have reason to know of the disability. The employer is not obligated to accommodate a person with a disability if they are not aware of the disability. Usually this means that the person with a disability must tell the employer about his/her disability and request accommodation.

4. Has a reasonable accommodation been requested?

The person with a disability must let the employer know that reasonable accommodation is necessary.

5. Can the essential functions of the job be performed with or without reasonable accommodation?

The accommodation must help the person with a disability perform the essential functions of the job. An employer will not be required to hire a second person to perform the essential functions of the job. For example: an employer wishes to hire a typist whose only job function is typing documents. An applicant has carpal tunnel and cannot type. The employer will not be required to hire a second person to perform typing duties.

6. What are some examples of reasonable accommodation?

Some examples of reasonable accommodations set forth in the MHRA and the ADA include the following:

- making facilities accessible to, and usable by, persons with disabilities;
- job restructuring, such as exchanging parts of a job with another employee. (For example, one job requires periodic heavy lifting and the employee has a bad back. Perhaps another employee who does not have a bad back can do the lifting while the employee with a bad back does another part of the other person's job.)

- modified work schedules, such as allowing an employee with diabetes who has dietary restrictions to eat more often or have lunch at a different time, or allowing an employee to extend the work day in order to have a rest period in the middle if required by a disability;
- reassign the employee with a disability to a vacant position which the employee is qualified to fill and which the employer needs filled;
- modifying equipment or devices, or providing aides, readers or interpreters.

7. When is an employer not obligated to provide reasonable accommodation?

An employer is not obligated to provide an accommodation if it would impose an undue hardship on its business. Factors that the statutes indicate can be considered to determine undue hardship include:

- cost of the proposed accommodation;
- overall size of the business, including number of employees;
- number of facilities;
- type of operation;
- structure of the work force; and
- number of employees at the location where the accommodation would occur.

An example of undue hardship might be that the employer has several facilities, but only one or two employees at each office who have to do all of the work. An employer can consider the nature and cost of an accommodation, and whether or not the accommodation could be considered at some facilities, (for example, where the employer has more employees) and perhaps not at others where the facility and the accompanying work force are smaller.

8. What if an employer refuses to accommodate?

If an employer is unwilling to provide the accommodation requested, or if the employer claims the provision of an accommodation is an undue hardship, an employer has the burden to prove that it has considered the least restrictive or less expensive alternatives, including consultation with the disabled person or with organizations serving persons with disabilities.

Employers often think that it will cost a good deal more to make an accommodation than it actually would cost. Sometimes an accommodation is as simple as allowing someone to have their instructions tape recorded, or allowing someone to wear ear phones so they are not distracted by noise around them, or allowing someone an empty office as space when they have difficulty with concentration or attention span.

Recently, a study was completed of Sears employees from 1978 to 1994. The focus of the study was to determine how much reasonable accommodations actually cost the company. It was determined that only about ten percent of the persons identified as having disabilities actually needed an accommodation. Of that number, the accommodation cost anywhere from practically nothing to several hundred dollars. The average cost per employee broke down to \$36.00 over this sixteen-year period.

9. Does an employer have to accommodate a disability-related absence?

Generally an employer is not obligated to accommodate disability-related absences as a form of reasonable accommodation. If an employee is absent due to the conditions of his/her disability, an employer may treat the absence in the same way that absence of employees is generally treated. However, if you have been employed for more than one year, you may be able to seek relief under the Family Medical Leave Act. Contact the Wage and Hours Division of the Department of Labor at (612) 370-3371.

10. Does an employer have an obligation to provide an employee with a wheelchair, personal care assistant, or other service which may be necessary to perform the job?

An employer is not obligated to provide equipment or services if those services are necessary both at home and at work. For example, if you could use the wheelchair at work, but you need it at home as well, the employer does not have to buy it as a reasonable accommodation. If, however, you need a special kind of chair because of the job you are doing and you cannot use the same chair you use at home, then the employer may have to accommodate the request to provide the chair.

If your job requires some unique needs for personal care assistants, the employer may have to accommodate you. However, if you need a PCA to use the restroom and you also need a PCA to use your bathroom at home, the employer will probably not have to pay for it.

11. What are the time limits for filing a claim?

There are Statutes of Limitations which require a person who believes that he/she has suffered discrimination to file a complaint in the court system or a charge with the administrative agencies listed below within a very short period. A Minnesota Human Rights Act claim must be filed with the Minnesota Department of Human Rights or in court within one year of the date the discriminatory event occurred. A federal ADA claim must be filed with the EEOC within 300 days from the date of the discriminatory event. Unlike state claims, a person must file a federal ADA claim with the EEOC prior to filing a complaint in court. If you do not file a complaint within those time periods, you may lose your right to sue.

If you want to file a charge, you may contact:

Minnesota Department of Human Rights
Army Corps of Engineers Center, 190 East Fifth Street, Suite 700
St. Paul, MN 55101
Telephone: (651) 296-5663 or 1-800-657-3704

Equal Employment Opportunity Commission (EEOC)
330 South Second Avenue, Suite 430
Minneapolis, MN 55401
Telephone: (612) 335-4040
www.eeoc.gov

RESOURCES

The EEOC offers a variety of fact sheets on the ADA, some from the perspective of employee's rights, and some from the perspective of the responsibilities of employers. They are available at EEOC's website or can be ordered by calling the office listed above.

Another resource for providing information on reasonable accommodation in employment is the Job Accommodation Network (JAN). JAN is a free consultant service which helps employers make individualized accommodations. The telephone number is 1-800-526-7234.

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