

*The U.S. Equal Employment Opportunity Commission*

		Number 915.002
EEOC	NOTICE	
		October 17, 2002

1. **SUBJECT:** EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act
2. **PURPOSE:** This enforcement guidance supersedes the enforcement guidance issued by the Commission on 03/01/99. Most of the original guidance remains the same, but limited changes have been made as a result of: (1) the Supreme Court's decision in *US Airways, Inc. v. Barnett*, 535 U.S., 122 S. Ct. 1516 (2002), and (2) the Commission's issuance of new regulations under section 501 of the Rehabilitation Act. The major changes in response to the Barnett decision are found on pages 4 5, 44 45, and 61 62. In addition, minor changes were made to certain footnotes and the Instructions for Investigators as a result of the Barnett decision and the new section 501 regulations.
3. **EFFECTIVE DATE:** Upon receipt.
4. **EXPIRATION DATE:** As an exception to EEOC Order 205.001, Appendix B, Attachment 4, . a(5), this Notice will remain in effect until rescinded or superseded.
5. **ORIGINATOR:** ADA Division, Office of Legal Counsel.
6. **INSTRUCTIONS:** File after Section 902 of Volume II of the Compliance Manual.

## Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act

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### Notice Concerning The Americans With Disabilities Act Amendments Act Of 2008

The Americans with Disabilities Act (ADA) Amendments Act of 2008 was signed into law on September 25, 2008 and becomes effective January 1, 2009. Because this law makes several significant changes, including changes to the definition of the term "disability," the EEOC will be evaluating the impact of these changes on this document and other publications. See the [list of specific changes to the ADA](#) made by the ADA Amendments Act.

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## INTRODUCTION

This Enforcement Guidance clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship. Title I of the ADA requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause an undue hardship. This Guidance sets forth an employer's legal obligations regarding reasonable accommodation; however, employers may provide more than the law requires.

This Guidance examines what "reasonable accommodation" means and who is entitled to receive it. The Guidance addresses what constitutes a request for reasonable accommodation, the form and substance of the request, and an employer's ability to ask questions and seek documentation after a request has been made.

The Guidance discusses reasonable accommodations applicable to the hiring process and to the benefits and privileges of employment. The Guidance also covers different types of reasonable accommodations related to job performance, including job restructuring, leave, modified or part time schedules, modified workplace policies, and reassignment. Questions concerning the relationship between the ADA and the Family and Medical Leave Act (FMLA) are examined as they affect leave and modified schedules. Reassignment issues addressed include who is entitled to reassignment and the extent to which an employer must search for a vacant position. The Guidance also examines issues concerning the interplay between reasonable accommodations and conduct rules.

The final section of this Guidance discusses undue hardship, including when requests for schedule modifications and leave may be denied.

## GENERAL PRINCIPLES

### **Reasonable Accommodation**

Title I of the Americans with Disabilities Act of 1990 (the "ADA")<sup>(1)</sup> requires an employer<sup>(2)</sup> to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship. "In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities."<sup>(3)</sup> 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."<sup>(4)</sup>

The duty to provide reasonable accommodation is a fundamental statutory requirement because of the nature of discrimination faced by individuals with disabilities. Although many individuals with disabilities can apply

for and perform jobs without any reasonable accommodations, there are workplace barriers that keep others from performing jobs which they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or rules (such as rules concerning when work is performed, when breaks are taken, or how essential or marginal functions are performed). Reasonable accommodation removes workplace barriers for individuals with disabilities.

Reasonable accommodation is available to qualified applicants and employees with disabilities.<sup>(5)</sup> Reasonable accommodations must be provided to qualified employees regardless of whether they work part time or full time, or are considered "probationary." Generally, the individual with a disability must inform the employer that an accommodation is needed.<sup>(6)</sup>

There are a number of possible reasonable accommodations that an employer may have to provide in connection with modifications to the work environment or adjustments in how and when a job is performed. These include:

- 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.<sup>(7)</sup>

A modification or adjustment is "reasonable" if it "seems reasonable on its face, i.e., ordinarily or in the run of cases;"<sup>(8)</sup> this means it is "reasonable" if it appears to be "feasible" or "plausible."<sup>(9)</sup> An accommodation also must be effective in meeting the needs of the individual.<sup>(10)</sup> In the context of job performance, this means that a reasonable accommodation enables the individual to perform the essential functions of the position. Similarly, a reasonable accommodation enables an applicant with a disability to have an equal opportunity to participate in the application process and to be considered for a job. Finally, a reasonable accommodation allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy.

**Example A:** An employee with a hearing disability must be able to contact the public by telephone. The employee proposes that he use a TTY<sup>(11)</sup> to call a relay service operator who can then place the telephone call and relay the conversation between the parties. This is "reasonable" because a TTY is a common device used to facilitate communication between hearing and hearing impaired individuals. Moreover, it would be effective in enabling the employee to perform his job.

**Example B:** A cashier easily becomes fatigued because of lupus and, as a result, has difficulty making it through her shift. The employee requests a stool because sitting greatly reduces the fatigue. This accommodation is reasonable because it is a common sense solution to remove a workplace barrier being required to stand when the job can be effectively performed sitting down. This "reasonable" accommodation is effective because it addresses the employee's fatigue and enables her to perform her job.

**Example C:** A cleaning company rotates its staff to different floors on a monthly basis. One crew member has a psychiatric disability. While his mental illness does not affect his ability to perform the various cleaning functions, it does make it difficult to adjust to alterations in his daily routine. The employee has had significant difficulty adjusting to the monthly changes in floor assignments. He asks for a reasonable accommodation and proposes three options: staying on one floor permanently, staying on one floor for two months and then rotating, or allowing a transition period to adjust to a change in floor assignments. These accommodations are reasonable because they appear to be feasible solutions to this employee's problems dealing with changes to his routine. They also appear to be effective because they would enable him to perform his cleaning duties.

There are several modifications or adjustments that are not considered forms of reasonable accommodation.<sup>(12)</sup> An employer does not have to eliminate an essential function, i.e., a fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or without reasonable accommodation,<sup>(13)</sup> is not a "qualified" individual with a disability within the

meaning of the ADA. Nor is an employer required to lower production standards—whether qualitative or quantitative<sup>(14)</sup>—that are applied uniformly to employees with and without disabilities. However, an employer may have to provide reasonable accommodation to enable an employee with a disability to meet the production standard. While an employer is not required to eliminate an essential function or lower a production standard, it may do so if it wishes.

An employer does not have to provide as reasonable accommodations personal use items needed in accomplishing daily activities both on and off the job. Thus, an employer is not required to provide an employee with a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed off the job. Furthermore, an employer is not required to provide personal use amenities, such as a hot pot or refrigerator, if those items are not provided to employees without disabilities. However, items that might otherwise be considered personal may be required as reasonable accommodations where they are specifically designed or required to meet job related rather than personal needs.<sup>(15)</sup>

### **Undue Hardship**

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.<sup>(16)</sup> "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.<sup>(17)</sup> 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.<sup>(18)</sup>

## **REQUESTING REASONABLE ACCOMMODATION**

### 1. How must an individual request a reasonable accommodation?

When an individual decides to request accommodation, the individual or his/her representative must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. To request accommodation, an individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation."<sup>(19)</sup>

Example A: An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation.

Example B: An employee tells his supervisor, "I need six weeks off to get treatment for a back problem." This is a request for a reasonable accommodation.

Example C: A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation.

Example D: An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting reasonable accommodation. He does not link his need for the new chair with a medical condition.

While an individual with a disability may request a change due to a medical condition, this request does not necessarily mean that the employer is required to provide the change. A request for reasonable accommodation is the first step in an informal, interactive process between the individual and the employer. In some instances, before addressing the merits of the accommodation request, the employer needs to determine if the individual's medical condition meets the ADA definition of "disability,"<sup>(20)</sup> a prerequisite for the individual to be entitled to a reasonable accommodation.

### 2. May someone other than the individual with a disability request a reasonable accommodation on behalf of the individual?

Yes, a family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability.<sup>(21)</sup> Of course, the individual with a