



Disability Law Center's Self-Advocacy Materials

Updated October 2023

Employment

This document is designed for people with disabilities.

The information is about your legal rights and how to advocate for yourself as a resident in Massachusetts.

Contact us to request this information in an alternative format.

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Funding

DLC receives funding from government grants, private foundations, and individual contributions. For details about our funding and programs, please visit our website:

<https://dlc-ma.org>



Requesting Reasonable Accommodation and Engaging in the Interactive Process

You Will Learn About:

- How to request reasonable accommodation from your employer
- Examples of employees requesting reasonable accommodation
- Examples of employees' representatives requesting reasonable accommodation
- The reasonable accommodation interactive process
- Implementation of an effective accommodation

This document includes general information about legal issues and is intended to be used for informational purposes only. These informational materials should not be taken as legal advice, and do not create an attorney-client relationship. The outcome of any particular matter will depend on a variety of factors. For specific legal problems you would need to contact an attorney.

How Does an Employee Request Reasonable Accommodation from Their Employer?

When an employee decides to request an accommodation based on a disability, the employee or his/her representative must let the employer know that they need an adjustment or change at work to be able to perform the essential functions of their job, and that the need for the accommodation is related to a medical condition. To request an accommodation, an employee may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation." There must be a connection between the disability and the accommodation requested. It is best (but not required) to put a request for a reasonable accommodation in writing and to keep copies of all documents (or notes of conversations) related to the request.

The following are examples of requests for reasonable accommodation.

- An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing."
- An employee tells his supervisor, "I need six weeks off to get treatment for a chronic back problem."
- A new employee, who uses a wheelchair, informs her employer that her wheelchair cannot fit under the desk in her office.

The following is not an example of a request for a reasonable accommodation.

- An employee tells his supervisor that he would like a new chair because his chair is uncomfortable. Although this is a request for a change at work, the statement is insufficient to put the employer on notice that the employee is requesting a reasonable accommodation. The employee did not link his need for the new chair with a medical condition or disability.

A family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability. The following are examples of requests for reasonable accommodation.

- An employee's spouse phones his supervisor to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off.
- An employee has been out of work for six months with a work-related injury. The employee's doctor sends the employer a letter, stating that the employee is released to return to work, but with certain work restrictions. (Alternatively, the letter may state that the employee is released to return to a light duty position).

What Documentation May an Employer Request in Response to the Employee's Reasonable Accommodation Request?

An employer may request supporting documentation if the disability or the need for the accommodation is not obvious. The employer may ask for reasonable documentation about the employee's disability and functional limitations to the extent that they are related to the accommodation request.

Reasonable documentation means that the employer may require only the documentation that is needed to establish that a person has an ADA disability, and that there is a connection between the disability and the reasonable accommodation requested. This documentation may be referred to as “medical support,” and generally comes from an appropriate healthcare professional who is treating the employee, including, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation, employers should specify what types of information they are seeking regarding the individual’s disability, its functional limitations, and the need for reasonable accommodation. The employee may be asked to sign a limited release allowing the employer to submit a list of specific questions to the health care or vocational professional.

As an alternative to requesting documentation, an employer may simply discuss with the person the nature of his/her disability and their functional limitations. The employer should explain to the employee why it is requesting information, such as to verify the existence of an ADA disability or to support the need for a reasonable accommodation.

NOTE: If an employee’s disability or their need for reasonable accommodation is not obvious, and they refuse to provide the reasonable documentation requested by the employer, then the employee is not entitled to reasonable accommodation

What Limits are there on Documentation Requests by Employers in Response to an Employee’s Reasonable Accommodation Request?

In response to a request for reasonable accommodation, an employer may NOT ask for documentation that is unrelated to determining the existence of a disability and/or the necessity for an accommodation. In most cases, this means an employer cannot request a person’s complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation. If an employee has more than one disability, an employer may request information pertaining only to the disability that relates to the reasonable accommodation request.

The following are examples of the scope of documentation that an employer may request in response to an employee’s request for reasonable accommodation:

- An employee says to their employer, "I'm having trouble reaching tools because of my shoulder injury." The employer may ask the employee for documentation describing the impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities (i.e., the employer is seeking information as to whether the employee has an ADA disability).
- A marketing employee has a severe learning disability. He attends numerous meetings to plan marketing strategies. In order to remember what is discussed at these meetings he must take detailed notes but, due to his disability, he has great difficulty writing. The employee tells his supervisor about his disability and requests a laptop computer to use in the meetings. Since neither the disability nor the need for accommodation are obvious, the supervisor may ask the employee for reasonable documentation about his impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities. The

employer also may ask why the disability necessitates use of a laptop computer (or any other type of reasonable accommodation, such as a tape recorder) to help the employee retain the information from the meetings.

- An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. The supervisor can ask the spouse to send in documentation from the employee's treating physician that confirms that the hospitalization was related to the multiple sclerosis and provides a reasonable estimate of how long an absence may be required from work.

Does an Employer Have to Provide the Exact Accommodation That an Employee Has Requested?

No. Employers are only required to provide an **effective accommodation**, which means one that enables the employee to perform the essential functions of the job. It does not have to be the exact accommodation that the employee requested nor the employee's "preferred accommodation."

- An **effective accommodation** removes a workplace barrier, thereby providing the employee with an equal opportunity to apply for a position, to perform the essential functions of a position, or to gain equal access to a benefit or privilege of employment.
- If there are two possible reasonable accommodations, and one costs more or is more burdensome than the other, the employer may choose the less expensive or burdensome accommodation as long as it is effective. Similarly, if there are two or more effective accommodations, the employer may choose the one that is easier to provide. In either situation, the employer does not have to show that it is an undue hardship to provide the more expensive or more difficult accommodation.
- Employers and employees are expected to engage in an "interactive process" to determine an effective accommodation. Work with your employer during the interactive process to find an accommodation that works for both you and the employer.
- Don't quickly reject a suggestion from your employer for a different type of accommodation than you asked for. Give serious thought to whether or not it will be effective. If you can, try it out first. If it's not working, go back to your employer and reopen the interactive process.
- Employers **do not** have to lower production standards or ignore poor work quality as a reasonable accommodation. They also do not need to remove essential functions of a person's job.

NOTE: Following your accommodation request, it is important to document your cooperation with your employer during the interactive process. Courts have ruled in favor of the employers in failure to provide reasonable accommodation cases where the employee was responsible for the breakdown in the interactive process.

What is a Reasonable Time Frame for an Employer to Respond to the Employee's Request for Reasonable Accommodation?

An employer should respond quickly and efficiently to a request for reasonable accommodation. If the employer and the employee with a disability need to engage in an interactive process, then it should proceed as quickly as possible. The employer should act promptly to provide the reasonable accommodation. Unnecessary delays can result in a violation of the ADA. However, there are no strict timelines in the ADA. The relevant factors in determining whether there has been an unnecessary delay in responding to a request for reasonable accommodation include the reason(s) for the delay; the length of the delay; to what extent the employee with a disability and the employer each contributed to the delay; what the employer was doing during the delay; and whether the required accommodation was simple or complex to provide.

The following are examples of whether the employer reacted with unnecessary delay to an accommodation request:

- An employer provides parking for all employees. An employee who uses a wheelchair requests from his supervisor an accessible parking space, explaining that the spaces are so narrow that there is insufficient room for his van to extend the ramp that allows him to get in and out. The supervisor does not act on the request and does not forward it to someone with authority to respond. The employee makes a second request to the supervisor. Yet, two months after the initial request, nothing has been done. Although the supervisor never definitively denies the request, the lack of action under these circumstances amounts to a denial, and thus violates the ADA.
- An employee who is blind requests adaptive equipment for her computer as a reasonable accommodation. The employer must order this equipment and is informed that it will take three months to receive delivery. No other company sells the adaptive equipment the employee needs. The employer notifies the employee of the results of its investigation and that it has ordered the equipment. Although it will take three months to receive the equipment, the employer has moved as quickly as it can to obtain it and thus there is no ADA violation resulting from the delay. The employer and employee should determine what can be done so that the employee can perform his/her job as effectively as possible while waiting for the equipment.