



Speaking With *One* Voice
Civil Rights Virtual Symposium

Gaining the Competitive Edge

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U.S. Department of Transportation

**Office of the Secretary (OST)
Departmental Office of Civil Rights (DOCR)
Policy, Education, and Outreach Division (S-35)**

“How May I Help You?”
***Recognizing and Providing Reasonable
Accommodations***

An Overview of the U.S. DOT’s Model

Introduction

Moderator

- Emiliano Lopez, Chief Operations Officer, Office of Civil Rights for the Federal Highway Administration

Presenters

- Rosanne Goodwill, Director, Civil Rights Office for the Pipeline and Hazardous Materials Safety Administration
- Annette Carr, Accommodations Analyst, Disability Resource Center, Office of the Secretary
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Overview

During this session, participants will learn

- The legal foundation of Reasonable Accommodations
- Recognizing a Request
- Making a disability determination
- “Analysis of the request”
- Selection of the accommodation
- Documentation
- Confidentiality and Privacy



What is a Reasonable Accommodation (RA)?

- Any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to:
 - Participate in the application process
 - Perform the essential job functions
 - Have equal access to programs, services, and benefits of employment



Who qualifies for an accommodation?

- A Person with a Disability:
 - Someone who has a physical or mental impairment that substantially limits on or more major life activities.
 - Someone who has a record of such an impairment.
 - Someone who is regarded as having such an impairment.
- A Qualified Individual with a Disability:
 - Someone who meets the legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks.
 - Someone who can perform the **“essential functions”** of the position with or without a reasonable accommodation.



Laws and Regulations

- What are they and when do they apply?



Rehabilitation Act of 1973, as Amended

- **Prohibits discrimination on the basis of disability in:**
 - Programs conducted by Federal Agencies
 - Programs receiving Federal financial assistance
 - Federal employment
 - The employment practices of Federal contractors
- **Rehab Act Sections**
 - Section 501 – Affirmative Action and Nondiscrimination in employment by Federal Agencies
 - Section 503 – Affirmative Action and prohibits employment discrimination by Federal Government contractors and subcontractors with contracts of more than \$10,000
 - Section 504 – No qualified individual with a disability in the United States shall be:
 - Excluded from,
 - Denied the benefits of, or
 - Be subjected to discrimination under any program or activity that receives Federal financial assistance or is conducted by any Executive Agency or the United States Postal Service
- **Section 508**
 - Establishes requirements for electronic and information technology developed, maintained, procured, or used by the Federal Government
 - Requires Federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public



Americans with Disabilities Act Amendments (ADAA)

Civil Rights Law

- Title I – Employment, businesses with 15+ employees
- Title II – Public services, state & local governments, including transportation offered by a state or local government
- Title III – Public accommodations and services operated by private entities
- Title IV – Telecommunications
- Title V – Miscellaneous provisions



Internal Policy and Process

DOT Order – Procedures for Processing Requests for Reasonable Accommodations by DOT Job Applicants and Employees with Disabilities (2014)



How NOT to handle a request for Reasonable Accommodation

During a meeting with her supervisor, Jennifer explains to her supervisor that she is currently seeing a doctor for a medical condition and needs to adjust her start and end time to allow her extra time in the morning to get to work. The supervisor says that is not possible as everyone must be in the office by the official start time, and it would not be fair to the other employees if that rule is dropped for her. Jennifer relays that her doctor says that this is necessary. The supervisor's response is "I can't imagine why a doctor would have told you that, especially since nothing appears to be wrong with you. What exactly is the matter with you?" The employee reluctantly tells her supervisor that she must implement a treatment plan when she first gets up in the morning that adds 90 minutes to her morning routine. The supervisor tells her that unless she provides documentation from her doctor she should just get up earlier so that she can be to work on time. The employee provides the supervisor with the documentation she has from her doctor. The supervisor says that she will review it later as she needs to leave and start her 2-week vacation.

During the supervisor's absence, one of Jennifer's co-workers comes up to her with a very concerned look on his face. He tells Jennifer he is sorry to hear Jennifer is sick and is undergoing serious medical treatment. Jennifer is stunned as the only one she told was her supervisor about a week ago. Jennifer soon learns that the entire office knows because her co-worker who is filling in for their supervisor found Jennifer's medical documentation on the supervisor's desk along with the notes she had taken during her meeting with Jennifer and shared it with everyone in the office.



What Went Wrong?

- Reason 1
- Reason 2
- Reason 3



Recognizing Reasonable Accommodation Requests

- No special words
- Made orally, in writing, and/or by a third party
- What is being asked for?
- Responding to the request
- What is your next step?



Activity I: Is this a Reasonable Accommodation Request?

Leanora's supervisor calls her in to his office. He lets her know that he has noticed that she is arriving late every day and he wondered if she could share with him what is going on. Leanora explains that when she arrives in the morning there are no parking spaces near their section of the facility and she must park 2 parking sections away. Due to her medical condition, she is finding it difficult to walk that distance.



Activity II: Is this a Reasonable Accommodation Request?

Henry will be going out of town for a 2-week required training. He has submitted a request in writing to his supervisor requesting that the agency pay for his wife's airfare and meals so that she can travel with him. He explains that his wife has a medical condition that requires treatment multiple times per day and he is the only one trained in how to perform it.



Disability Determination

Is the disability:

- Obvious?
- Hidden?



When to seek Additional Documentation

- When specific limitation(s) for which the issue or barrier is unclear
- When effective accommodation is not obvious
- When parties are comparing the effectiveness of several potential accommodations



The Purpose of Documentation

- How the impairment affects the applicant's ability to participate in:
 - The application process
 - The interview process
 - The employee's ability to perform the essential functions of the job
- Help define what types of accommodations may be effective



What information should you request

- The nature, severity, and duration of the impairment relevant to the request
- One or more of the major life activities that the impairment limits
- The extent or degree to which the impairment limits a major life activity
- The reason an individual requires a reasonable accommodation or the reasonable accommodation requested.

CAUTION: Only gather the disability/medical information directly related to the request



Who can you get the information from?

- The individual to the nature and extent of the disability and the functional limitations
- An appropriate professional:
 - Physician
 - Vocational Counselor
 - Physical Therapist
 - Another individual with recognized expertise regarding the disability



When can you request supplemental documentation?

- When there is insufficient documentation to establish if the individual has a disability
- When it is not clear what accommodation(s) is necessary and would be most effective



What and how to request supplemental documentation

- Explain the insufficiency of the documentation
- Identify the information and documentation needed
- Place the individual on notice that failure to provide the identified documentation can result in denial of the accommodation request
- Allow the individual the opportunity to provide the identified information and documentation



Where to go for assistance with making a disability determination

- Human Resources
- Civil Rights Office
- Chief Counsel
- Outside medical documentation review at the employer's expense



Activity III: Is the disability “hidden” or obvious?

Melissa is working in her first job since returning from active military duty. She is finding that abrupt typical office noises are triggering her PTSD related anxiety. As she uses the various techniques she was taught to manage the anxiety, she is finding these frequent episodes to be disrupting her work flow. She decides to speak to her supervisor. She is relieved that her supervisor did not get angry when Melissa told him about what is going on.



Activity IV: Is the disability “hidden” or obvious?

Franklin just accepted a new position and has submitted a written request for a Video Phone and sign language interpreting services. The HR Specialist forwards the request to the new hire’s soon to be supervisor. The supervisor immediately recalls that during the interview Franklin could verbally respond to all questions during the interview, and used a sign language interpreter to translate what the interview committee members were saying.



Analysis

- Identify the task(s)
- What is the barrier being experienced?



Reasonable Accommodation Solution Identification

- Contribution from all parties involved in the interactive process
- Pros and Cons of each potential solution
- Must provide opportunity for employee to perform essential functions of current job and or adhere to uniformly applied conduct rules
- Employer makes final selection



Reassignment

- Accommodation of last resort
- Must have documented all accommodations tried and the reason(s) they did not work
- Reassignment search
- Parameters
- Cannot be promoted



Documentation

- When was the request made?
- How did you respond?
- What action was agreed upon?
- When was it provided?
- When did you follow up to see if the provided accommodation is working?
- What was the response?



Privacy and Confidentiality

- Who should have access to accommodation related information?
- Handling medical information.



How to handle a RA request.

Maryjo has worked for her agency for over 20 years. Her work performance is outstanding as demonstrated by her evaluations. Recently she has experienced coordination issues in all aspects of her life. At work, this is evident in the increasing errors in her typing and illegible handwriting as the day progresses. Her doctor has recently diagnosed her with Multiple Sclerosis. She is concerned that if she brings this up to her supervisor he might determine that she is no longer qualified to continue working for him. On the other hand, she knows for a fact that her work performance issues will soon become evident.

Maryjo sets up a meeting with her supervisor. She starts out by explaining to him the problems she has had at work with typing and handwriting. She tells him that her doctor recently identified the underlying problem is a medical condition. Her supervisor tells her that he is glad that she came to speak with him about this and asks if she is aware of how he might help her. She responds by telling him that a friend of hers told her about some type of software that allows a person to talk to the computer rather than using the keyboard. The supervisor admits that he is not aware of this type of product, and he is not aware of whether he can get it for her, but he will check into it and get back with her.

The supervisor reaches out to his HR office and explains that he has an employee who has expressed that she is having problems doing her job due to a medical condition. He is referred to the agency's accommodations specialist. He learns that it is possible to provide Maryjo with speech recognition software as a Reasonable Accommodation in accordance with their agency's interactive Reasonable Accommodation process.



Resources

[Equal Employment Opportunity Commission \(EEOC\)](https://www.eeoc.gov/) - <https://www.eeoc.gov/>

[Department of Justice ADA Technical Assistance Program](https://www.ada.gov/taprog.htm) -
<https://www.ada.gov/taprog.htm>

[Job Accommodation Network \(JAN\)](http://askjan.org/) - <http://askjan.org/>

[Great Lakes ADA Knowledge Center](http://www.adagreatlakes.org/) - <http://www.adagreatlakes.org/>

[Association of Assistive Technology Act Programs](https://www.ataporg.org/programs) -
<https://www.ataporg.org/programs>



Conferences

[CSUN Assistive Technology Conference](http://www.csun.edu/cod/conference/2018/sessions/index.php/public/website_pages/view/5) (March 19-23, 2018)

http://www.csun.edu/cod/conference/2018/sessions/index.php/public/website_pages/view/5

[EEOC's EXCEL Conference](https://eeotraining.eeoc.gov/profile/web/index.cfm?PKwebID=0x2547b105&varPage=location) (July 10-12, 2018)

<https://eeotraining.eeoc.gov/profile/web/index.cfm?PKwebID=0x2547b105&varPage=location>

[National Employment Law Institute Conference \(NELI\)](https://www.neli.org/programs2.asp?ProgramID=15) – (Nov-Dec 2018 various locations/dates) <https://www.neli.org/programs2.asp?ProgramID=15>

[National Disability Rights Network Annual Conference](http://www.ndrn.org/annual-conference.html) (June 18-21, 2018)

<http://www.ndrn.org/annual-conference.html>



Questions



Thank you very much!

Request additional information or pose questions to the following:

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