



ADA

ESSENTIALS

A summary for leaders

The Americans with Disabilities Act of 1990 (ADA)

The ADA is a federal law that requires employers to accommodate employees with disabilities – including those who are disabled due to a health condition – unless doing so would cause undue hardship. This summary of the ADA will help guide you on the requirements of the law, but it's not meant to be exhaustive. If you have questions, ask the HR team at your Memorial facility.

Leader's responsibility for accommodating a request

Contact HR. They will facilitate the interactive process

Once you receive a request for accommodation, you and the employee should both undergo an informal interactive process to discuss what the employee needs and to determine if a reasonable accommodation is appropriate.

Do it promptly

You should start the interactive process as soon as an employee requests accommodation, and act promptly to provide it.

Do it in good faith

You and your employee should both participate in the interactive process in good faith.

How to conduct the process

To properly conduct the interactive process, you should:

- Directly communicate with your employee
- Carefully consider your employee's requested accommodation
- Explore alternative accommodations if your employee's original request is burdensome, and if you can provide an alternative without creating an undue hardship
- Offer an accommodation that is reasonable and effective
- Consider whether there are significant operational and/or safety consequences if the function is not performed

Must I hold an employee's position open indefinitely?

When requests occur

The question of an indefinite leave can come up when:

- Your employee says he or she has no idea when a return to work is possible
- Your employee requests multiple extensions after his or her prior leave has ended

Indefinite leaves are an undue hardship

Memorial is not under an obligation to provide indefinite leaves. To do so would qualify as an undue hardship.

Rationale for undue hardship

Undue hardship can occur when operations are disrupted and managers can't plan either for an employee's return to work or to permanently fill the job.

Multiple extensions

Memorial is not required to provide "an unlimited absentee policy." Therefore, requests for multiple extensions after an employee's leave has expired may not qualify as reasonable accommodations if each request simply postpones the employee's return-to-work date.

Reasonable accommodation and undue hardship: what are the limits?

Multiple reasonable accommodations

Memorial is not required to provide the exact reasonable accommodation an employee suggests or wants. Instead, our obligation is to provide an effective accommodation. If more than one effective accommodation exists, you can choose between them, and you're allowed to choose the accommodation that's either less expensive or easier to provide.

What if the employee refuses the accommodation?

Your employee is free to refuse an accommodation you offer. If you offer a reasonable accommodation, you will have met Memorial's ADA obligations, regardless of whether your employee accepts.

Standard for undue hardship

Memorial does not have to provide a reasonable accommodation that would cause an undue hardship.

Individualized assessments

Undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.

Factors for undue hardship

Factors that can help determine if an undue hardship exists include:

- The nature and net cost of the accommodation
- The financial resources of the Memorial facility in question, how many employees work there, the effect the accommodation would have on expenses and resources, and other effects on operations at the facility
- Memorial's overall financial resources, its size, number of employees, and type/location of the facility
- Memorial's overall operation, including the composition, structure and functions of our workforce.

What are essential job functions?

Significance

A reasonable accommodation can never force the elimination of an essential job function. Therefore, you only need to provide a reasonable accommodation when it would allow an employee to perform the essential functions of his or her job.

Definition

"Essential functions" are the "fundamental" duties of the job the employee holds but do not include "marginal functions of employment."

Criteria

A particular function may be "essential" if:

- The reason the job exists is to have that function performed
- Only a limited number of employees can perform that function
- The function is "highly specialized," and the employee who holds the job was hired for his or her expertise in performing it

What is a reasonable amount of leave?

Reasonableness is fact-specific

The amount of leave you're required to give an employee with a disability as a reasonable accommodation will most likely be based on facts and will probably vary from case to case. It will depend on whether a particular amount of leave time imposes an undue hardship on Memorial – and on whether the employee is still considered qualified.

For example, an additional two months' extension to a 15-month leave may not be unreasonable if temporary employees have been covering for the absent employee without any problems.

No absolute rule

There is no maximum amount of leave that constitutes a reasonable accommodation.

Short and definite

An accommodation request for leave is "reasonable only if it's for a short amount of time" (that is, not indefinite).

Is job restructuring a reasonable accommodation?

Yes. The ADA says that "reasonable accommodation may include but is not limited to job restructuring."

What does restructuring mean?

Restructuring can mean modifying the job to reallocate or redistribute nonessential job functions, or changing when or how the job function is performed. Memorial is never required to reallocate essential functions of an employee's position as a reasonable accommodation.

Telecommuting

Telecommuting can qualify as a reasonable accommodation except when an employee's physical presence is an essential function of the job.

Is reassignment a reasonable accommodation?

Yes. The ADA says that "reasonable accommodation may include but is not limited to reassignment to a vacant position." You only need to consider reassignment if your employee cannot be accommodated in his or her job, and if you both agree that a reassignment is desirable.

Similar and lower-level positions

If you reassign the employee, you must reassign him or her to a vacant position that's equivalent

in terms of pay, status, geographic location, etc., and if the employee is qualified for that position. If there's no vacant equivalent position, you may look for a lower-level vacancy.

Reassignments that aren't required

When you're reassigning an employee to another position, you're not required to:

- Bump another employee from a job in order to create a vacancy
- Promote the requesting employee as part of the reassignment
- Reassign the employee to a position for which he or she is not qualified
- Create a new position

What are reasonable accommodations for pregnancy?

Pregnancy itself is not a disability

Conditions and complications related to pregnancy may qualify as impairments.

We must treat pregnancy like other medical conditions

Memorial must offer the same benefits for employees' pregnancy-related conditions as we do for other medical conditions, and we can't discriminate based on pregnancy, childbirth, lactation or other conditions such as anemia, nausea, swelling, etc.

Dos and Do Nots

Do

- Assume your employee is coming from a genuine place when requesting leave
- Wish the employee the best
- Respect their privacy
- Encourage your employee to reach out to HR if they have questions
- Reach out to HR if the employee's time on LOA is different than what was communicated to you
- Ask the employee to let you know if they need anything

Do Not

- Tell other employees why someone is on leave
- Ask the employee to work while they are on leave
- Encourage the employee to check their email when on leave
- Contact the employee's healthcare provider
- Ask the employee about their medical condition

Questions? Contact
your HR Team

FMLASource
fmlasource.com
(844) 242-6747
Monday through Friday 8:30 a.m. to 10:30 p.m.

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