

The Interactive Process

A framework for disability accommodations

GUIDE



One of the most complex issues facing employers today is how to properly and proactively manage employee accommodations and leaves of absence. Employers must navigate a complicated maze of legislation and case law at federal, state, and local levels, and be sure they comply with often overlapping rules and regulations that affect leave of absence, return-to-work, and reasonable accommodation policies.



Meeting the challenge—reaping the benefits

Accommodations for people with disabilities affect employers from the initial interview of candidates to retirement after decades of employment. Twelve percent of the U.S. population lives with disabilities both obvious and invisible. And nearly one in four workers will become disabled for three months or longer during his or her career.¹

¹Council for Disability Awareness, "Chances of Disability: Me, Disabled?," http://www.disabilitycanhappen.org/chances_disability/disability_stats.asp.

An employer's responsibility

The Americans with Disabilities Act (ADA) requires covered employers to offer reasonable accommodations to employees with disabilities to ensure the essential functions of the job are completed.

Creating standardized and documented processes to address accommodations for disabled employees may reduce exposure to complaints or litigation, which can be disruptive and time-consuming.

However, that can be easier said than done. Even though failure to provide accommodations to disabled employees may result in costly litigation and the assessment of large financial penalties against employers, guidance on how to explore and implement accommodations properly can be difficult to find.

One place to turn is the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC recommends that employers use an interactive process when exploring reasonable workplace accommodations for employees with disabilities. In the simplest terms, the interactive process calls for employers and employees with disabilities to work together and jointly explore possible workplace accommodations.

The interactive process is not required under the ADA. However, it creates a framework to help employers document handling requests for accommodations, tracking accommodations provided and denied, measuring an accommodation's effectiveness and ensuring that all accommodation requests are handled equitably. Should the need arise, the interactive process demonstrates that an employer made a good-faith effort to comply with the ADA.





The interactive process

The Job Accommodations Network (JAN) — a free service based at the University of West Virginia and funded by the Office of Disability Employment Policy (ODEP) — has developed a six-step, interactive process that many employers find useful in creating an orderly, standardized approach to accommodation requests with documented, measurable benchmarks and assessment capabilities.

The JAN interactive process model is a series of conversations in which the employer gathers facts and documents the employee's situation and the need for an accommodation. The objective of the conversations is to identify the most reasonable accommodation (and alternatively, if an accommodation cannot be made, to document the reasons for the denial). Having face-to-face conversations with employees and gathering appropriate documents are crucial to the interactive process.



Employers are free to develop their own methods for complying with the ADA. For those employers seeking to define an approach, many turn to the JAN network, which outlines the interactive process below:

Six-step approach to accommodation requests

Step 1:
Recognizing an
accommodation

Step 2:
Gathering
information

Step 3:
Exploring
accommodation
options

Step 4:
Choosing an
accommodation

Step 5:
Implementing an
accommodation

Step 6:
Monitoring the
accommodation

Step 1: Recognizing an accommodation request

There are no magic words that an employee must use when requesting an accommodation. An accommodation request can be in plain English and need not mention the ADA or use the word “accommodation.” Managers should be trained to consider these events as triggers to beginning a good-faith interactive process:

- Employees indicate they are having trouble with their job duties due to a medical condition
- Employees express a concern about their ability to perform a job, regardless of the words they use
- The employer notices a change in an employee’s work performance, attendance, or other employment-related issues that might be related to a disability, even without the employee making an accommodation request
- The employer has a knowledge of work restrictions or functional limitations that are affecting an employee’s work (for example, employee has a doctor’s note listing work restrictions)

Step 2: Gathering information

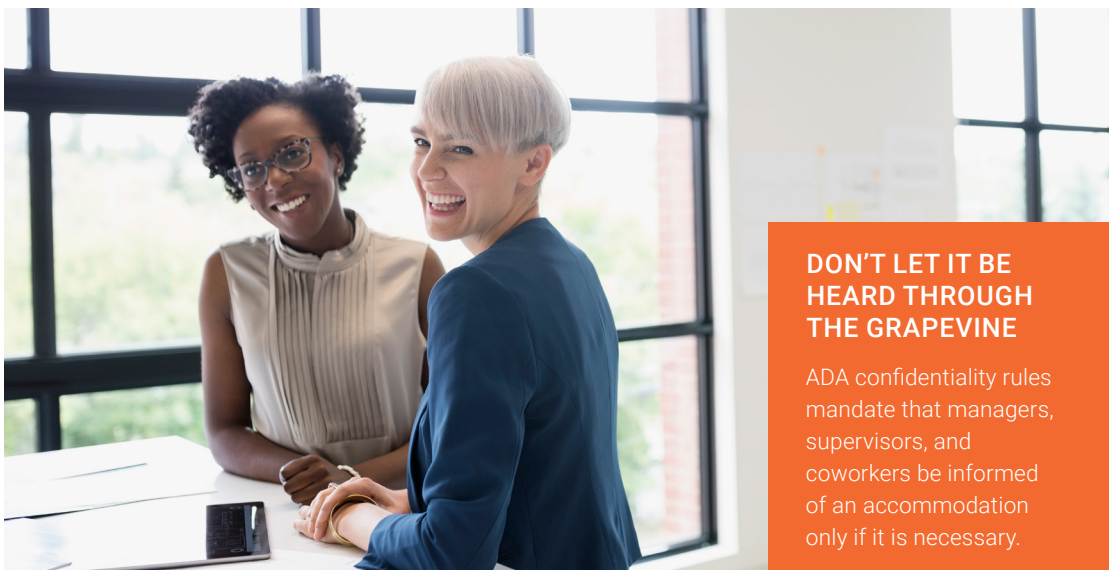
It’s essential to actively engage the affected employee throughout the accommodation process, to assure that both the company and the employee have a clear understanding of all the information and options involved. Companies should have a designated interactive process coordinator who thoroughly understands all leave and accommodation policies as well as the interactive process the company has created. This person works with the employee to gather information related to the employee’s medical condition, answer questions and document the process.

When gathering medical information, employers must be mindful of EEOC guidelines about making medical inquiries and requesting medical examinations of employees.² Specifically, employers can only ask for medical information that is job-related and consistent with a business necessity. Also, employers cannot ask an employee to provide documentation if the employee’s disability and the need for accommodation are obvious, or if the employee has already provided sufficient information to substantiate an ADA qualifying disability and the need for a reasonable accommodation.

INTERACTIVE PROCESS TIPS

- ☐ **Err on the side of caution.**
If you’re not sure if the employee is requesting an accommodation or not, ask. A simple conversation can quickly clarify matters.
- ☐ **Don’t use the interactive process to determine disability.**
The interactive process is for fact-finding and will not always lead to an accommodation.
- ☐ **Act quickly.**
Unnecessary delays in acting on an accommodation request can violate the ADA.
- ☐ **Conduct training.**
Managers and supervisors should receive training on how to recognize and respond to an accommodation request.

²U.S. Equal Employment Opportunity Commission, “Questions and Answers: Enforcement Guidance on Disability-Related Inquiries and Medical Examinations Of Employees Under The Americans With Disabilities Act (ADA),” <https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees>.



Step 3: Exploring accommodation options

Reasonable accommodations include any appropriate measures that maintain a safe work environment and allow the employee with a disability to perform the essential functions of the job.

Possible accommodations could include:

- Modified or part-time schedule
- Modification to the work environment
- Modified workplace policies
- Assistive technology
- Working remotely

Brainstorm ideas

Start with the affected employee — the employee and their healthcare provider are in the best position to offer suggestions.

Ask experts

JAN offers free consultation and advice to employers and employees. Specialists from state agencies that address disability issues can be helpful. Insurance carriers, employee assistance program providers, and third party administrators (TPAs) are also knowledgeable in this area.

When consulting with outside resources, it's important to be mindful of ADA rules on confidentiality, and how they affect the flow of information between employees, their employer, and medical personnel. One way to ensure compliance is to withhold the employee's name and identifying information from outside consultants. Keep in mind that during this process, the employee's privacy is to be respected at all times.

Step 4: Choosing an accommodation

The goal of the interactive process is to determine a reasonable accommodation that will allow the employee to perform the essential functions of his or her job. While it's important to consider the employee's preference when selecting an accommodation, the employer ultimately decides what reasonable accommodation will be implemented. The employer may choose, for example, the lowest-cost option available. Remember: A decision is not final and employers are free to try accommodations and alter or stop them if they do not work.

After choosing an accommodation, the interactive process coordinator has a role in managing the performance expectations of managers and supervisors. It is reasonable to expect that an employee's performance should become consistent with what it was prior to the need for an accommodation.

However, when an accommodation request is denied, there should be clear documentation on how that decision was made and the employer should be confident in the result. Employers should clearly explain any decision to the employee. Legal counsel and employee relations personnel should be an integral part of the denial process.



A BEST PRACTICE: DESIGNATE AN INTERACTIVE PROCESS COORDINATOR

To ensure a consistent interactive process and proper documentation, employers should designate an “interactive process coordinator” from the human resources or personnel department. This person is not the decision maker. The coordinator’s responsibilities in the interactive process are to:

- Handle the intake requests
- Act as primary contact for the employee during the process
- Ensure the interactive process is conducted in a timely manner
- Gather information from all appropriate parties
- Document the process (such as, meeting minutes, recap of conversations, documentation of decisions, and so forth)
- Research external resources to support and facilitate employee accommodations

Step 5: Implementing the accommodation

Once an accommodation is chosen and understood by both the employer and employee, a time frame needs to be set to make sure the accommodation is implemented in a timely manner. The interactive process coordinator can work with the employee's manager or supervisor to ensure that all necessary steps are taken. When implementing an accommodation, a defined trial period with associated benchmarks can assist all parties with identifying if the accommodation is working appropriately.



Step 6: Monitoring the accommodation

Monitoring and reviewing accommodations makes good sense for both the employer and the employee. Some employees may only need an accommodation for a limited period during recovery from an illness or injury. An accommodation may lose its effectiveness and a job's requirements can change, as can the tools, equipment, and even the workplace itself. An accommodation may become an undue hardship for the employer, which would relieve the employer of the obligation to continue providing it.

Ongoing communication with the affected employee is the best approach. Employees should be encouraged to let their manager know if there are changes or problems with the accommodation. Employers should ensure that regular maintenance is performed on those accommodations involving machinery, and software solutions should be reviewed by IT on a regular basis. Regular monitoring and review can make the difference between a minor issue that's easily resolved and a bigger problem that can significantly impact an accommodation's effectiveness and an employee's performance.

Disability accommodations FAQ

What is a disability?

Under the ADA, an individual is considered disabled if they have:

- A physical or mental impairment that substantially limits one or more major life activities, which includes working
- A record of such impairment
- Been regarded as having such impairment

What is not included?

Case law and common sense provide some guidance on what is not included. An employer is not required to:

- Eliminate or remove essential job functions
- Displace other employees
- Lower quality standards
- Create a permanent “light duty” position
- Provide personal use items (such as glasses or hearing aids)
- Provide an accommodation that creates an “undue hardship”
- Create a new position

What if the injury or illness is temporary?

Let’s look at an example from EEOC:³

Q: One of my employees has a broken arm that will heal but is temporarily unable to perform the essential functions of his job as a mechanic. Is this employee protected by the ADA?

A: No. Although this employee does have an impairment, it does not substantially limit a major life activity if it is of limited duration and will have no long-term effect.

Who is JAN?

The Job Accommodations Network (JAN) is:

- The leading source of free, expert, and confidential guidance on workplace accommodations and disability employment issues
- Visit JAN at: askjan.org
- Call JAN toll-free: 800-526-7234

What is a reasonable accommodation?

Reasonable accommodation:

A hammock? Probably not. A private office? Maybe.

The EEOC has stated that a reasonable accommodation is “...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 or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those employees without disabilities.”

How can I find out more about the ADA and how my company can adhere to it?

Legal counsel

Legal counsel should always be part of any decision concerning ADA compliance. In addition to JAN, other general sources of information on the ADA include:

- U.S. Equal Employment Opportunity Commission
- Group benefits insurance carrier
- U.S. Office of Disability Employment Policy
- Third party administrators (TPAs) offering reasonable accommodation consultation

³U.S. Equal Employment Opportunity Commission, “Questions and Answers: Enforcement Guidance on Disability-Related Inquiries and Medical Examinations Of Employees Under The Americans With Disabilities Act (ADA),” <https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees>.



Conclusion

Once implemented and reviewed, it becomes evident that a clearly communicated, standardized approach to accommodating employees with disabilities not only reduces potential liability, but also may cost less than expected. Positive results of proactive accommodation practices can be seen not only in the company's bottom line, but just as importantly, in employee retention and recruitment, and support among coworkers, suppliers, customers, and the community.

About Lincoln Financial Group

Lincoln Financial Group applies deep expertise across the entire absence management spectrum to deliver tailored return-to-work, stay-at-work, and tracking and reporting solutions in support of compliance with the ADA. Drawing on more than 60 years of experience in supporting return-to-work accommodations, our approach begins before an event occurs and continues through successful return-to-work and accommodation.



For more information about our accommodation services, please contact your Lincoln Financial Group sales or service representative.

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Lincoln Financial Group is pleased to offer employers assistance with the administration of the Americans with Disabilities Act and its related amendments. Please remember that our Accommodation Services are advisory only and Lincoln Financial Group assumes no responsibility for determinations and decisions that are required to be made by the employer, including identifying employees in need of accommodations, initiation and coordinating the interactive process, determining employee eligibility, deciding whether any accommodations are offered or not offered to eligible employees, and determining the duration of any accommodations.