

Determining Undue Hardship Under the ADA



The Americans with Disabilities Act (ADA) and related Amendments Act requires employers to focus on providing reasonable and suitable accommodation for employees who are considered disabled under the law unless doing so creates an undue hardship for the employers' business. So when does an accommodation become an undue hardship?

The morale of other employees cannot be a factor in considering whether an accommodation constitutes undue hardship.

Factors used to determine whether an undue hardship exists include:

- The nature and cost of the accommodation.
- The size, type, and financial resources of the specific facility where the accommodation would occur.
- The overall size, type of operation, and financial resources of the covered employer.

Undue hardship can only be proven at the end of a carefully conducted and documented reasonable accommodation process. This involves an individualized assessment of the specific circumstances.

- Start with an interactive dialogue between the employee with a disability, the employee's supervisor, and HR to brainstorm ideas about possible reasonable accommodations.
- Narrow down the ideas that might work and critically think through each option. Does it accommodate the employee's needs? Is it a recurring or one-time need? What are the related costs? How will it affect productivity? What other positions exist that utilize similar skill sets? How will this be monitored to ensure it is working? This step requires the most time and consideration.
- Seek assistance. The [Job Accommodation Network](#) is a comprehensive resource offering free, expert, and confidential guidance on workplace accommodations and disability employment issues.
- Hire an appropriate professional. An industrial engineer, physician, occupational therapist, or other professional may be able to assess needs of the workplace and the employee and suggest possible accommodations. The employee's physician may also be able to provide suggestions.



If an employee is disabled and an identified accommodation such as the use of a chair, alternate work schedule, or modified duties will permit him/her to perform the job, the accommodation cannot be denied because of the reaction of others or the assumption that "everyone will ask for that same accommodation." Similarly, undue hardship cannot be based on other employees' fears or prejudices toward the individual's disability. For example, an employer cannot deny an employee who has HIV the opportunity to do his/her job because co-workers do not want to work with that employee.

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It is important to document the entire process carefully. The employer will need to show that a wide range of possible accommodations were considered and found unsuitable, either because they did not permit the employee to perform the job or were a significant cost to prove undue hardship.

The effects of providing a reasonable accommodation must also be quantified. The employer must be able to show specifically what would happen if duties were not performed and how much it would cost to hire someone else for that period. Even then, it is not a guarantee that the law will consider the decision as meeting the threshold of undue hardship.

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