

ADA, ADAAA & Reasonable Accommodation Process

Office of Diversity, Equity, and Inclusion (ODEI)



What You Should Know

The following information for ADA, ADAAA and the Reasonable Accommodation process will be reviewed:

- History of ADA & ADAAA
- ADA five (5) Titles as it relates to different areas of public life
- Definition of a disability defined by law
- Reasonable Accommodation/Examples
- How to request a Reasonable Accommodation
- Management's Role & Responsibility
- ADA Coordinator's Role & Responsibility
- Undue Hardship

History of ADA & ADAAA

1 | The Americans with Disabilities Act (ADA) was passed into law in 1990.

- The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.
- Employers with 15 or more employees must comply with the ADA.
- State and local governments must comply regardless of size.

2 | The Equal Employment Opportunity Commission is the federal agency that enforces the ADA law.

- The ADA was extended to the Americans with Disability Act Amendments Act (ADAAA) in 2008 and signed into law and effective on January 1, 2009.
- The ADAAA clarified the definition of disability.

3 | What are employers required to do?

Employers are to provide Reasonable Accommodations to qualified applicants or employees, which are modifications or adjustments to a job or the work environment that will enable an applicant or employee with a disability to participate in the application process or to perform the essential job functions.

ADA | 5 Titles

1. **Title I (Employment):** is designed to help individuals with disabilities access the same employment opportunities and benefits available to people without disabilities.
2. **Title II (State and Local Government):** also known as (Public Services) protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. In addition, public transportation systems, such as public transit buses, must be accessible to individuals with disabilities.
3. **Title III (Public Accommodations):** requires all newly constructed public buildings be readily accessible and barriers in existing facilities be removed if possible. Public Accommodations include but are not limited to retail stores, hotels, grocery stores, museums, and even privately owned transportation systems.
4. **Title IV (Telecommunications):** addresses the accommodation requirements for telecommunication companies offering telephone services to the general public. These companies must have telephone relay services. This service is for use by persons requiring TTYs or similar communication devices.
5. **Title V (Miscellaneous Provisions):** covers other requirements and definitions that are not addressed in the other Titles. It includes a provision prohibiting either (a) coercing or threatening and (b) retaliating against individuals with disabilities or those attempting to aid people with disabilities in asserting their rights under the ADA.

Disability Defined by Law

According to the Equal Employment Opportunity Commission (EEOC), not everyone with a medical condition is protected by the law. In order to be protected, a person must be qualified for the job and have a disability as defined by the law.

A person can show that he or she has a disability in one of three ways:

1. A person may be disabled if they have a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).
2. A person may be disabled if they have a history of a disability (such as cancer that is in remission).
3. A person may be disabled if they are believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if they do not have such an impairment).

Note: A medical condition does not need to be long-term, permanent, or severe to be substantially limiting. Also, if symptoms come and go, what matters is how limiting the symptoms are when they are active. (Source: <https://www.eeoc.gov/disability-discrimination-and-employment-decisions>)

Reasonable Accommodation

A reasonable accommodation is defined as:

- Modification(s) or adjustment(s) to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
- Modification(s), adjustment(s), or change to a job or work environment or to the manner or circumstances under which the position held or desired is customarily performed, that enables a qualified individual with a disability to perform the essential functions of that position; or
- Modification(s) or adjustment(s) that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees.
- Only individuals who have an actual disability, or who have a record of a disability are entitled to accommodations; individuals who are regarded as having a disability are not entitled to accommodations.

Examples of a Reasonable Accommodation

Some possible reasonable accommodations could be:

- Making the workplace accessible for wheelchair users.
- Providing a reader or interpreter for someone who is blind or hearing impaired.
- Making a schedule change.
- Granting telework.
- Allowing leave for disability-related treatment or symptoms.
- Reassignment to a vacant position where reasonable accommodation is not possible in the current job.

How to Request a Reasonable Accommodation

It is the employee and/or job applicants' responsibility to inform management/supervisors or recruiters about their need for a Reasonable Accommodation.

- Employees may make a request to the designated ADA Coordinator for a specific modification to their job as a result of a disability by emailing msp.odei@maryland.gov.
- Employees may mention to their supervisor challenges they are experiencing performing their job due to a medical condition.
- Job applicants may self identify during the application process whether they have a disability and need for an accommodation(s).

Procedures

- Employees requesting a reasonable accommodation should submit a State of Maryland Reasonable Accommodation Request Form (*available on PowerDMS*), with medical certification confirming the existence of a qualifying disability as well as a need for accommodation, to the ADA Coordinator for appropriate action.
- Requests for reasonable accommodation which cannot be resolved by the ADA Coordinator within 30 days of the receipt of the appropriate documentation will be presented confidentially to the ADACC; all efforts will be made to protect the privacy of the individual making the request.

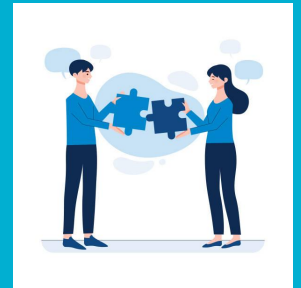


Management's Role & Responsibility

- Connects employees and/or job applicants with the Agency's designated ADA Coordinator for assistance.
- Cooperates with the ADA Coordinator during the Reasonable Accommodation **interactive process**.
- Remains impartial, open-minded and **confidential** at all times.
- Attends ADA and EEO trainings.
- Provides ADA and EEO training to all designated staff members.
- Will not subject an employee(s) to retaliation due to their request for an accommodation.

ADA Coordinator's Role & Responsibility

- Coordinates the **interactive process** with the employee and designated manager/supervisor during the reasonable accommodation process.
- Trains managers, supervisors and employees on the disability laws and the reasonable accommodation process.
- Administers reasonable accommodations to all qualified employees and job applicants.
- Ensures that meeting/conference rooms, lunch rooms and employment tests are accessible.
- Ensures all agency accessibility requirements are met.



Confidentiality

- The ADA law requires that employers keep all medical records and information confidential and in separate medical files.
- The State of Maryland Reasonable Accommodation Policy and Procedure in support of applicable disability laws, requires that all documents concerning an employee's reasonable accommodation request should be maintained in the employee's confidential file, separate from the employee's official personnel file, in accordance with applicable confidentiality laws and regulations.



(Source: <https://www.eeoc.gov/disability-discrimination-and-employment-decisions>)

Undue Hardship

An employer doesn't have to provide an accommodation if doing so would cause undue hardship to the business. Undue hardships are determined on a **case-by-case basis**, and take into consideration:

- The nature and net cost of the accommodation needed under this part, taking into consideration the availability of outside funding;
- The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility and the effect on expenses and resources;
- The type of operation or operations of the employer including the composition, structure and functions of the workforce of the employer, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer;
- Legitimate safety concerns; and
- The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

Contact ODEI

Roland Rubin, ADA Coordinator

roland.rubin@maryland.gov

410-653-4312

To submit your request for a reasonable accommodation, please email the required documentation to msp.odei@maryland.gov.

