Reasonable Accommodation



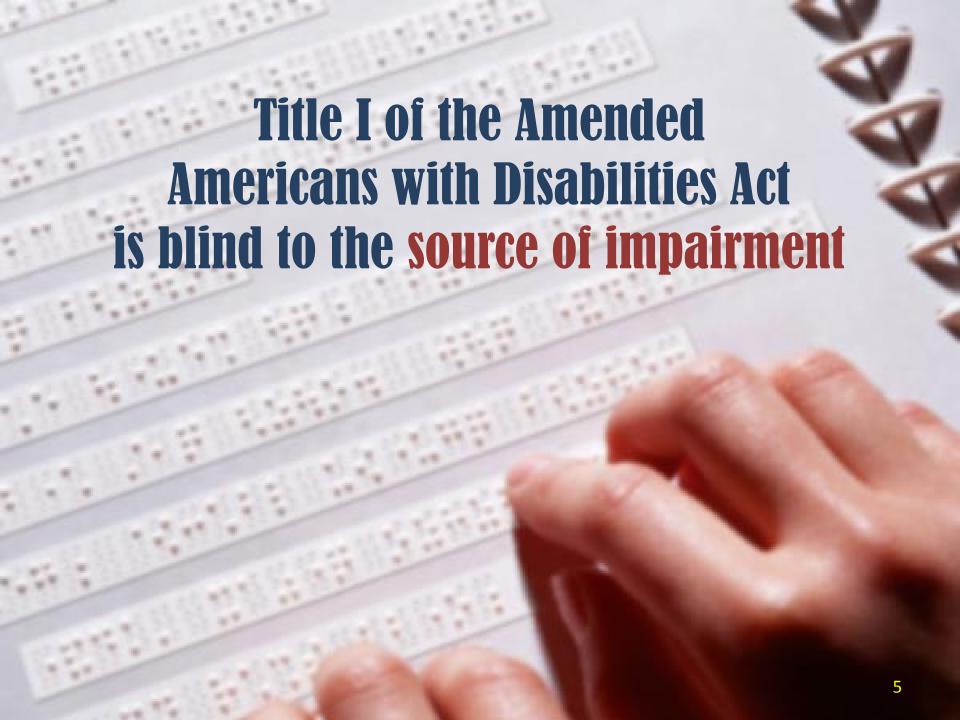
Reasonable Accommodation

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Section One Useful Tips



Title I of the amended Americans with Disabilities Act is a process law





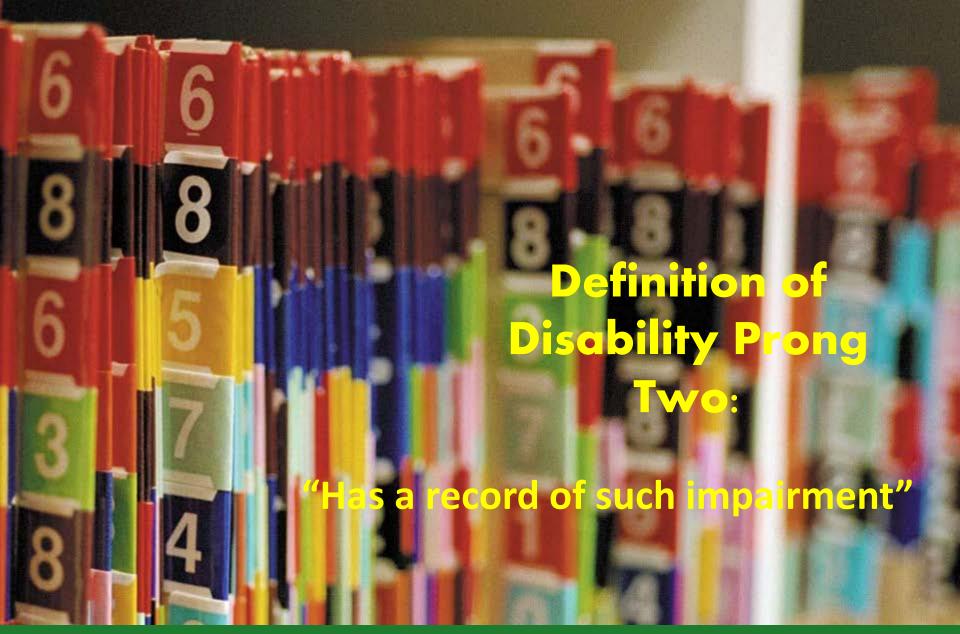
One Person – One Job – One Accommodation

Section Two The Definition of Disability

Definition of Disability *Prong One*

A physical or mental impairment which substantially limits a major life activity







Definition of Disability
Prong Three

"Is regarded as having such an impairment"

Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment



Section Three The Qualified Individual

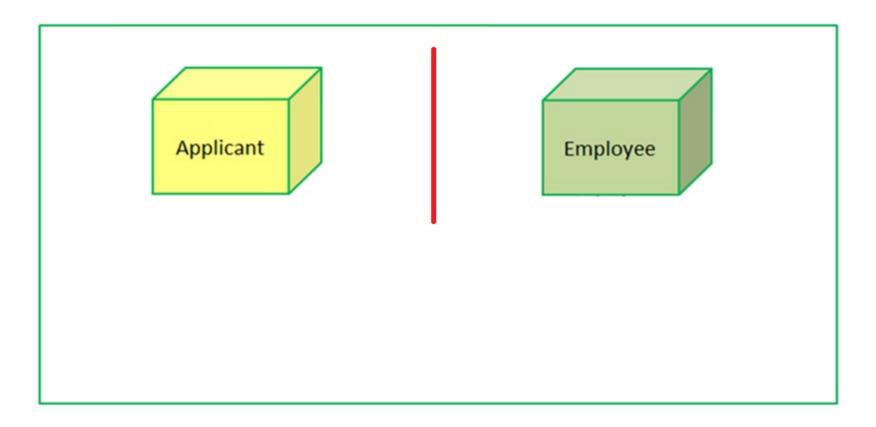
The Qualified Individual

The term "qualified individual" means an individual who can perform the essential functions of the employment position that such individual <u>desires</u> or <u>holds</u>, with or without reasonable accommodation.

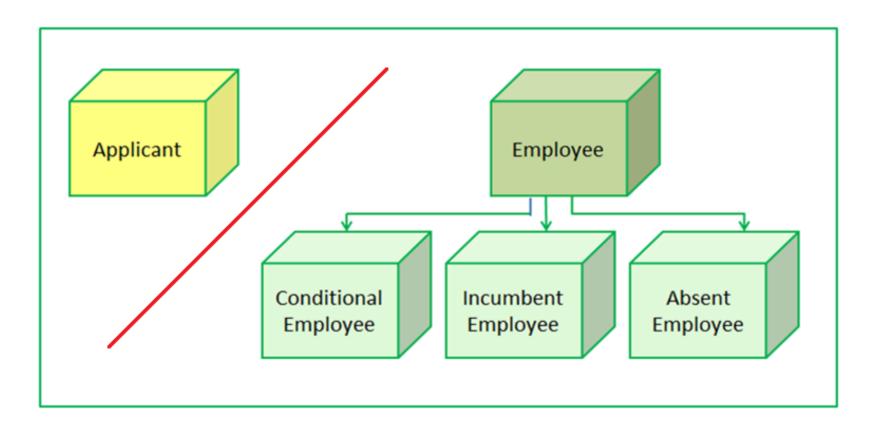
Title 42 – The Public Health and Welfare, Chapter 125 Equal Opportunity for Individual with Disabilities, Subchapter I (Employment) Section 12111.

Definitions, (8) Qualified Individual

The Phases of Employment



The Phases of Employment



Section Four Employment and the Job

Who Must Comply with Title I?

"Covered Entities" include:

Private employers with 15+ employees

State and local governments

Employment Agencies

Labor Unions

Joint labor-management

committees



Direct Threat

- An employer may require that an individual not pose a "direct threat" to the health or safety of himself/herself or others.
- A health or safety risk can only be considered if it is "a significant risk of substantial harm." Employers cannot deny an employment opportunity merely because of a slightly increased risk.
- An assessment of "direct threat" must be strictly based on valid medical analyses and/or other objective evidence, and not on speculation.

The Qualified Individual

The term "qualified individual" means an individual who can perform the essential functions of the employment position that such individual <u>desires</u> or <u>holds</u>, with or without reasonable accommodation.

Title 42 – The Public Health and Welfare, Chapter 125 Equal Opportunity for Individual with Disabilities, Subchapter I (Employment) Section 12111.

Definitions, (8) Qualified Individual

Essential Function

A Myth About Essential Functions

The "essential functions" of a job are <u>not</u> the physical or cognitive demands of the job...



Essential Functions

...they are the <u>tasks which must be accomplished</u> to justify the job's existence.



What is an **Essential** Function?

- 1. The reason the position exists is to perform the function
- 2. A limited number of employees are available to perform the function
- 3. Highly specialized skills are required to perform the function
- 4. The amount of time spent performing the function is significant

What is an Essential Function?

- 5. The work experience of former workers is included the function
- Written job descriptions prepared before advertising or interviewing applicants for the job include the function
- 7. The terms of a collective bargaining agreement include the function
- 8. The employer's judgment that the function is essential

Essential Function Statements

- 1. Confer with <u>supervisory personnel</u>, <u>owners</u>, <u>contractors</u>, <u>and design professionals</u> to discuss and resolve matters such as work procedures, complaints, and construction problems.
- **2. Evaluate** construction methods and determine costeffectiveness of plans, using computers.
- **3. Inspect and review** <u>projects</u> to monitor compliance with building and safety codes, and other regulations.
- **4. Interpret and explain** plans and contract terms to administrative staff, workers, and clients, representing the owner or developer.

Marginal Functions

- May requisition <u>supplies or materials</u> to complete construction projects.
- May direct acquisition of <u>land</u> for construction projects.
- May apply green building strategies to reduce energy costs or minimize carbon output or other sources of harm to the environment.

Physical Demands

Stand

Pull

Hear

Walk

Climb

Near Acuity

• Sit

Reach

Far Acuity

• Lift

- Handle
- Accommodation

Carry

Finger

Exposure to Weather

Push

Talk

Noise

Compliant Essential Function Job Descriptions

Modern job descriptions begin with clear and simple "essential function statements":

- 1. <u>Teach</u> French to high school students
- 2. <u>Transport</u> patients using a wheelchair or gurney
- Move control levers and wheels to guide cranes, booms, and dollies that move cameras and other equipment

Essential Function Job Descriptions

Essential and Marginal Functions Report

Wolf Trap Creations

Camera Operator, First Field Location Identifier Code: COFFL

Based on DOT Code: 143.062-010 Industry Code: 2411

This document details the essential functions for the usual and customary performance of the duties of the job classification listed above.

Essential Functions

The "essential functions" of a position are those tasks that meet the definition of "the reason the position exists." The job classification of "Camera Operator, First Field Location" includes the following essential functions:

- 1. Plans, directs, and coordinates motion picture filming
- Confers with DIRECTOR, MOTION PICTURE (motion picture) regarding interpretation of scene and desired effects
- Observes set or location and reviews drawings and other information relating to natural or artificial conditions to determine filming and lighting requirements
- Reads charts and computes ratios to determine required lighting, film, shutter angles, filter
 factors, camera distance, depth of field and focus, angles of view, and other variables to produce
 desired effects
- Confers with ELECTRICIAN, CHIEF (motion picture) to establish lighting requirements
- Selects cameras, accessories, equipment, and film stock, utilizing knowledge of filming techniques, filming requirements, and computations
- Instructs camera operators regarding camera setup, angles, distances, movement, and other variables and signals cues for starting and stopping filming



Protect Your Company

Going forward from today, decisions about hiring, stay-at-work, return-to-work, and reasonable accommodation should rest on a <u>foundation of accurate knowledge</u> of the <u>essential functions</u> of the

job.



Section Five Reasonable Accommodation Overview

What is an Accommodation?

An accommodation is:

- 1. A modification to the work space or an exception to a policy that ensures that a person with a disability can perform a job.
- 2. A change to how something is done so we can accommodate that particular essential function for the employee in question.

Types of Reasonable Accommodation

- Purchase or modification of equipment, tools, or work aids
- 2. Job restructuring
- 3. Adjustments of the physical environment of the job site
- 4. Changes to the flow of work
- 5. Leave (other than FMLA)



The Reasonable Accommodation Policy

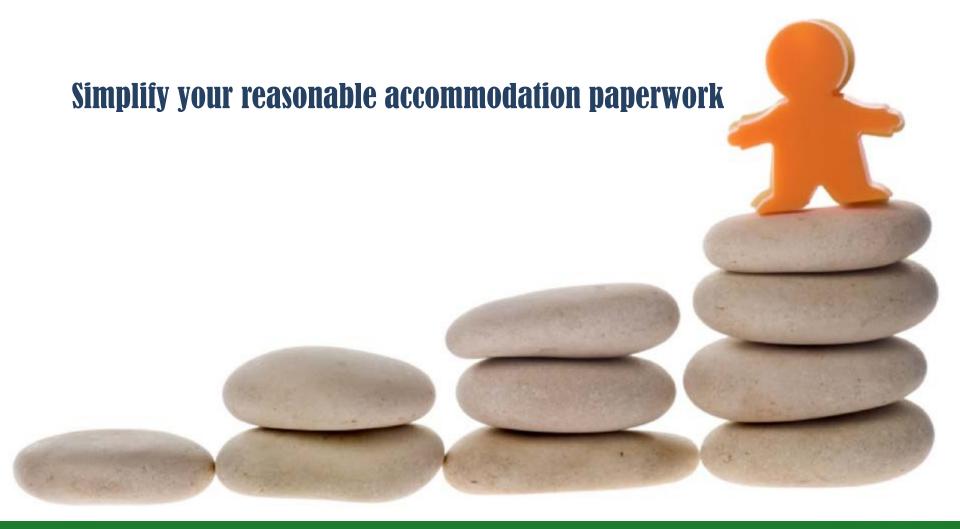


Reasonable Accommodation Action Steps



*Roy Matheson (EEOC ADA Rock n' Roll Tour, Detroit, 2012)

The Reasonable Accommodation Process



Train Your Supervisors



First Step in Documentation



The Request for Accommodation

Confirmation of Request for Reasonable Accommodation

Na	me of applicant/employee	Date	
	o Title Department		
	Questions to clarify accommodation requested What specific accommodation are you requesting?		
	If you are not sure what accommodation is needed, do you have any suggestions about what options we can explore? If yes, please explain.	☐ Yes	□ No
	Is your accommodation request time sensitive? If yes, please explain.	☐ Yes	□ No
В.	Questions to document the reason for accommodation request What, if any, job function are you having difficulty performing?		

La solicitud de acomodación razonable

Confirmación de Solicitud de Acomodación Razonablen

No	mbre de aplicante/empleado	Fecha	
Título del empleo Departamento		ento	
••••			•••••
A.	Preguntas para clarificar acomodación solicitada		
	¿Cuál acomodación específica está solicitando?		
	Si usted no está seguro del tipo de acomodación necesaria, ¿tiene sugerenci sobre cuáles opciones pueden ser exploradas? Si sí, explique por favor.	as 🗆 Sí	□ No
	¿Es su solicitud de acomodación de "tiempo sensible"? Si sí, explique por favo	or. Sí	□ No
В.	Preguntas para documentar la razón de solicitud de acomodac ¿Cuál función de empleo, si es aplicable, está teniendo dificultad en realizar?		

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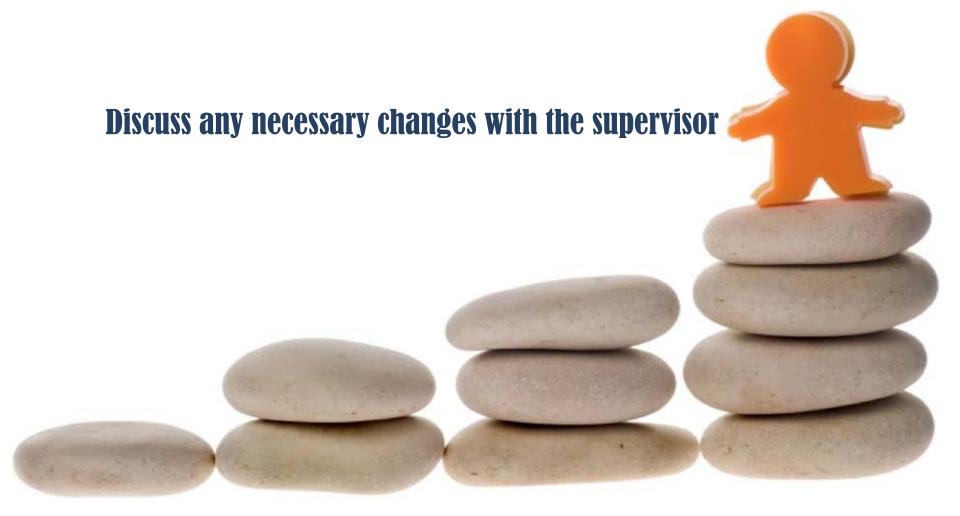
Reasonable Accommodation Action Steps



*EEOC Commissioner Chai R. Feldblum (ADA Rock n' Roll Tour, Detroit, 2012)



Granting the Request



Documention

Document how the process began: supervisor or coworker observations, reasons for concerns, employee's self-disclosure of concern.

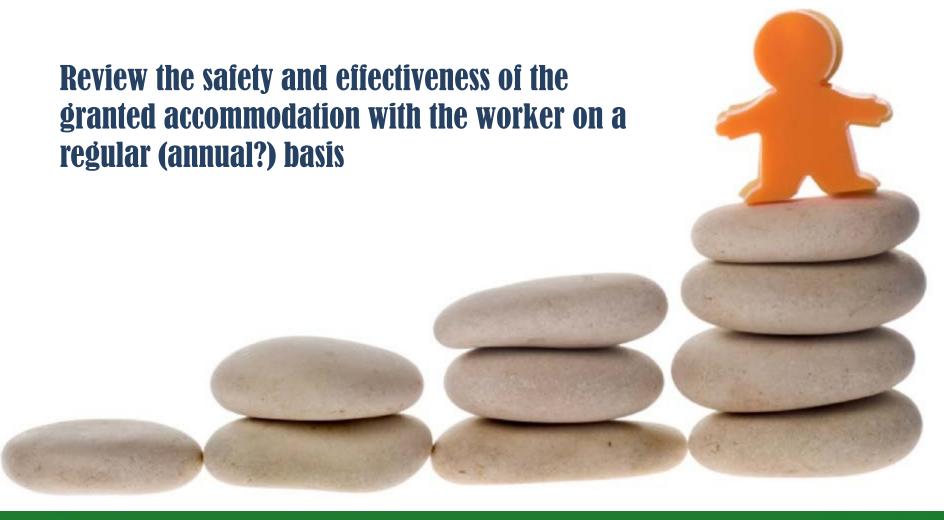
When a request is received, documentation should include a description of the request, goals to be achieved by the request, final cost of the request, and date to be reviewed in the future.



Discuss Changes with the Supervisor



Failed or Not Needed Accommodation?



Notes and Reminders about the Interactive Process

- Both the employer and the worker must participate in the interactive conversation with good faith.
- 2. The worker must represent himself in conversations about reasonable accommodation; other counsel is allowed.
- An employer may ask for substantiation of the link between the work disability and an essential function of the job.

- The selected accommodation must remediate the work disability.
 - A. What is the purpose of leave?
 - B. How will working from home remediate the disability in a way that being onsite won't remediate?
 - C. If the accommodation does not enable the individual to perform the essential functions of the job then he is no longer qualified.
 - Search for other reasonable solutions including transfer to another job for which the individual is qualified.

- 5. Use ergonomic evaluation tools to establish:
 - A. The trigger to discomfort
 - B. Suggestions for engineering controls
 - C. Suggestions for administrate controls
 - D. Need for personal protective equipment
 - i. Yovtcheva v. City of Philadelphia Water Department, No. 12-3089

- 6. The employer should have known:
 - A. The OSHA 300 Log
 - B. Observation of change in behavior
 - C. Observation of dress

- 7. You are <u>not</u> required to compromise your conduct standards, safety standards, or your production quotas in the search for a reasonable accommodation
- 8. You are <u>not</u> required to transfer an employee into a job for which he is not qualified

- 9. You are <u>not</u> required to retain an employee who displays unprofessional conduct
- 10. You are <u>not</u> required to employ someone who is not able to safely carry out the essential functions of the job even with accommodation.

Working with the Individual

- A. Is job attachment in tact?
- B. Does the individual have an <u>in-place</u> reasonable accommodation?
 - i. Description of the accommodation
 - ii. Prior to the current absence was the accommodation safe and effective?
 - iii. Is the accommodation still relevant and needed after return to work?

- C. What is the individual's phase of employment?
 - i. Applicant
 - ii. Conditional hire
 - iii. Incumbent
 - iv. Absent
 - a. Is there a time limit on job attachment?
 - b. Is the worker able to return to the same job without accommodation?

- D. The return to work path
 - i. Has the underlying <u>impairment or disease</u> been established?
 - ii. Has a link from the impairment or disease to a disability been established?
 - a. What is the relationship of the disability to a physical or cognitive demand tied to an essential function?

- iii. Are physician restrictions in-place?
 - a. Is there a bona fide connection between each restriction and a physical or cognitive demand tied to an essential function?
 - b. Does the magnitude of each restriction compromise the worker's ability to safely and effectively executive a physical or cognitive demand tied to an essential function?
- iv. Have physical and cognitive abilities been confirmed by direct testing (usually other than by a physician)?

(10) Undue hardship

(A) In general. - The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

- (B) Factors to be considered. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include
 - (i) the nature and cost of the accommodation needed under this chapter;

- (ii) 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; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) and the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

1. Catherine Robert v. Board of County Commissioners of Brown County, Kansas

Section Seven Case Studies

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- ✓ The individual is a man who works in a community health clinic as the lab technician for a busy primary care practice.
- ✓ There is one other lab technician available to assist but this individual also has duties at the blood bank next door. He has been employed at the clinic for more than 10 years.
- ✓ The department has a supervisor who is not qualified to perform the essential functions of a lab technician.

- ✓ The situation at hand is that the man apparently has some kind of change going on with his eyes.
- ✓ Co-workers and his supervisor have noticed that the employee often leans considerably forward and tilts his head at a significant angle to read the computer screen.
- ✓ He has been observed holding specimen containers and agar plates up to the light when reading results or preparing to take samples.

- ✓ The supervisor contacted the HR department last month when she discovered that he was working off the clock to complete documentation after his regular scheduled shift.
- ✓ He indicated to the supervisor that he was tired and needed to finish his lab documentation and did not want to incur overtime.

- HR is concerned about labor violations.
- Among the background work they have undertaken is to do an electronic search of all of his activity on the computer system that has taken place after scheduled hours of work.
- They discover that he has been working extended, non-compensated hours for most of a year.
- ✓ He has not been paid for any of these extra work hours.

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- ✓ In a meeting with HR and his supervisor for the extra hour labor issue, he self-discloses that he has developed "some vision problems" and that it is taking him longer to do the required documentation on the computer.
- He wants to know if he can have more time.

✓ Concern exists for correct reading of test results including seeing colors necessary to identify types of results, identifying tissue formation, and for the quantity of work getting done.

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Case Study #1 Laboratory Technician Developing Vision Challenges

✓ HR asks an occupational therapist who does ergonomic evaluations in the community to observe his work and see if he needs any accommodation.

? May the occupational therapist observe the individual and ask personal questions about his medical condition and report them to HR?

- ? If so, is it better to use the Reasonable Accommodation form available in Matheson software to stay in line with the ADAAA?
- ? How does the OT respectfully identify whether or not the person can see the form to fill it out himself or offer assistance?

? How does HR determine if the OT has decent training in Title I of the ADAAA?

? Can JAN (Job Accommodation Network) offer any help such as responding to questions from the supervisor or suggestion of tools to help the employee do his job better?

Case Study #2

Case Study #2 The Employee's Presentation

- An employee has obtained a physician's note with the following medical restrictions:
 - Lift/carry up to 20 pounds
 - Change positions, alternating sit/stand every 30 minutes
 - No bending or twisting at the waist

Case Study #2 Acknowledge Request

- The person receiving the request for accommodation is limited in their authority to ask questions about the individual's medical situation or disability.
- Line supervisors must be trained to simply acknowledge the receipt of the request
- Inquiry into the employee's medical or disability situation is left to an ADA team member.

Case Study #2 Background

The employee works in the company's internet technology department

Case Study #2 Interactive Conversation

- An initial interactive conversation (IC) meeting was held:
 - Request: work from home three days per week
 - The employee stated that he was requesting to work from home because of his long commute

Case Study #2 Interactive Conversation: Offer and Rejection

 I offered a sit/stand work station so the employee could change positions every 30 minutes. He declined the accommodation stating that he could not stand for any length of time and knew when he needed to move around.

Case Study #2 Interactive Conversation: Offer and Rejection

 I offered the employee flex time to accommodate his commute. He declined by responding that this was not the accommodation he needed.

Case Study #2

Interactive Conversation: Offer and Rejection

 After discussion with his supervisor we offered an accommodation to allow the employee to work from home on the days he has medical appointments including physical therapy. He declined stating that this was not the accommodation he needed.

Case Study #2 Interactive Conversation: Offer and Rejection

 I provided the employee with an accommodation letter to give to his doctor for clarification on his work modifications. The employee responded that his doctor already told him when providing the work restrictions that the doctor would not provide any additional information.

Case Study #2 Missing Information

• What is the *official diagnosis* (including name of the impairment)?

Section Eight Resources

The Accommodated Return-to-Work Decision Model

Physician sets safe medical restrictions based on his/her medical knowledge of the worker

If there is uncertainty about safe abilities, or if there is concern about compliance issues, physician refers for a RTW functional capacity evaluation (FCE)

Using an Essential Function Job
Analysis and the FCE,
mismatches between the
demonstrated safe abilities
and the physical demands of
the Essential Functions of the
job are identified

The resultant match between the worker's current physical abilities and the job's accommodated essential functions allow an informed return-to-work decision

Mismatches are resolved through real-time Reasonable Accommodation exploration

The employer continues the interactive process with the worker through-out the employment cycle





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