

**State of Michigan  
Practical Guide to  
Reasonable Accommodation  
Under the Americans with  
Disabilities Act  
Amendments Act  
of 2008 (ADAAA)**

2009

## **Introduction**

This adaptation of the Job Accommodation Network's (JAN) "Employers' Practical Guide to Reasonable Accommodations under the Americans with Disabilities Act (ADA)" is a collaborative endeavor by the Civil Service Commission, Department of Energy, Labor and Economic Growth (DELEG) and Office of the State Employer, Employee Health Management.

This guide to reasonable accommodations under the ADA is being provided to agency managers to ensure that all staff members have a shared level of basic information about the accommodation process. It was modeled on documents that Michigan Rehabilitation Services (MRS) and the Department of Career Development used in the past. The guide was developed to assist agencies with compliance with the ADA and other applicable state laws, rules, regulations, and policies. The guide is not a substitute for considering the governing language in those laws and rules, which should be referenced to address specific issues that arise.

The guide also provides information on resources and staff roles and responsibilities. Questions about reasonable accommodations can be addressed to the agency Reasonable Accommodation Coordinator (RAC) or Employee Health Management.

The guide contains links to forms and information used for the accommodation process. These forms can be copied and used by staff, downloaded from your department Intranet or the Civil Service website, or obtained by contacting your department RAC. The confidentiality of medical information provided in the accommodation process is taken very seriously. This information will be kept in the RAC's secured files and only shared when necessary to the accommodation process.

**TABLE OF CONTENTS**  
**(in 'click to view' format)**

I. ADA BASICS .....	4
A. What is the ADA .....	4
B. Employees Protected by Title I of the ADA .....	4
C. Definition of reasonable accommodation .....	5
II. REASONABLE ACCOMMODATIONS FOR APPLICATIONS AND INTERVIEWS .....	5
A. Job Advertisements and Applications .....	5
1. ADA Information on job advertisements and job applications.....	5
2. The ADA and affirmative action in hiring people with disabilities .....	5
3. Ensuring that the application process is inclusive to all applicants .....	6
4. Accommodating applicants during pre-employment testing.....	6
5. Employers and job descriptions .....	6
B. Job Interviews.....	7
1. Medical questions during the application and interview process.....	7
2. Accommodations and the interview process .....	7
C. After a Job Offer .....	7
1. Medical questions once a job offer has been made .....	7
2. Rescinding a job offer without violating the ADA .....	7
III. REASONABLE ACCOMMODATION FOR EMPLOYEES .....	7
A. Required Policies and Procedures .....	8
B. Accommodation Requests .....	8
1. Recognizing an accommodation request.....	8
2. Handling the accommodation request.....	8
3. Asking an employee whether an accommodation is needed.....	8
4. Receiving an accommodation request .....	8
5. Medical information and accommodation requests .....	9
6. Choosing an accommodation .....	10
C. Accommodation Issues .....	10
1. Work-Site Accessibility .....	10
a. Modifications of the work-site.....	10
b. Emergency evacuation.....	10
c. Parking.....	11
d. Reduction in hours .....	11
e. Part-time work with full-time pay and benefits .....	11
2. Modified Policies.....	11
a. 100% restriction-free policies .....	11
b. Conduct rules, dress codes, and hygiene requirements .....	12
3. Equipment and Services .....	12
a. Requiring specialized work equipment.....	12
b. Obligation to provide equipment or items for work only.....	12
c. Personal need items or services in the workplace .....	12
d. Personal assistance services (PAS) .....	12
e. Personal attendant care for work-related travel .....	13
f. Coworkers voluntarily assisting with personal needs .....	13
g. Job coaches.....	13
h. On-the-job travel .....	13
IV. EMPLOYEES ON LEAVES.....	13
A. Health and Disability Insurance.....	13
B. Bonuses and Promotions .....	13
C. Reductions in Force and Layoffs.....	14
V. RESOURCES.....	15

## I. ADA BASICS

The following section provides answers to basic questions about the ADA. Most answers come from formal and informal guidance from the United States Equal Employment Opportunity Commission (EEOC), the federal agency that enforces the employment provisions of the ADA.

### A. What is the ADA

The ADA is a federal civil rights law that was passed in 1990 and went into effect in 1992. Its stated purpose is to protect people with disabilities from discrimination in employment, in the programs and activities offered by state and local governments, and in accessing the goods and services offered in places like stores, hotels, restaurants, stadiums, doctors' offices, beauty parlors, etc. This guide focuses on Title I of the ADA, which prohibits discrimination in employment and requires employers to provide reasonable accommodations for employees with disabilities. The State of Michigan (SOM) is a covered entity under Title I.

### B. Employees Protected by Title I of the ADA

Title I protects "qualified employees with disabilities." A "qualified" individual satisfies the skill, experience, education, and other job-related requirements of the position sought or held, and can perform the essential job functions of the position, with or without reasonable accommodation. "Employee" means "an individual employed by an employer." Whether an employer-employee relationship exists is fact-specific and depends on whether the employer controls the means and manner of the worker's work performance. "Disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.

#### What is an impairment?

"Impairment" includes physiological, mental, and psychological conditions. A physiological impairment is a disorder or condition, a cosmetic disfigurement, or an anatomical loss affecting any major body system. A psychological or mental impairment includes disorders, such as mental retardation, organic brain syndrome, emotional or mental illness, and special learning disabilities. Under this inclusive definition of "impairment" a broad range of conditions have been protected under the ADA, including but not limited to, the following:

- Heart conditions
- Depression
- AIDS
- Epilepsy
- Diabetes
- Blindness
- Schizophrenia
- Mobility impairments

#### What does "substantially limits" mean?

The impairment must "substantially limit" one or more major life activities. A substantial limitation is more than inconvenient or bothersome. Determining whether an impairment is substantially limiting is done on a case-by-case basis.

#### What is a major life activity?

"Major life activity" has been defined in the ADAAA to include, but not be limited to, the following:

- Caring for oneself
- Hearing
- Walking
- Bending
- Learning
- Thinking
- Performing manual tasks
- Eating
- Standing
- Speaking
- Reading
- Communicating
- Seeing
- Sleeping
- Lifting
- Breathing
- Concentrating
- Working

Major life activity also includes the operation of a major bodily function, including, but not limited to, functions of the following systems:

- Immune
- Bowel
- Brain
- Endocrine
- Normal cell growth
- Bladder
- Respiratory
- Reproductive
- Digestive
- Neurological
- Circulatory

The ADAAA has clarified that an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

**Is it still a disability if corrected by medication or in remission?**

The ADAAA has also clarified that whether an individual’s major life activities are “substantially limited” cannot take into account the effects of “mitigating measures,” except for ordinary eyeglasses or contact lenses. For example, individuals with severe depression may be protected by the law even if medication allows them to perform their jobs without exhibiting any symptoms. A person with corrective lenses is not disabled if the glasses allow him or her to see. Additionally, if it would substantially limit a major life activity when active, an impairment that is episodic or in remission is still a disability.

**C. Definition of reasonable accommodation**

A reasonable accommodation is a modification or adjustment to a job, work environment, or way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity. “Equal employment opportunity” means an opportunity to attain the same level of performance or enjoy equal benefits and privileges of employment as are available to an average similarly-situated employee without a disability. The ADA requires reasonable accommodation in three aspects of employment: (1) to ensure equal opportunity in the application process, (2) to enable a qualified individual with a disability to perform the essential functions of a job, and (3) to enable an employee with a disability to enjoy equal benefits and privileges of employment.

“Essential job functions” means the fundamental duties of the employment position that the individual with a disability holds or desires. Essential functions do not include marginal functions of the position.

**II. REASONABLE ACCOMMODATIONS FOR APPLICATIONS AND INTERVIEWS**

The ADA applies to all aspects of employment, including job advertisements, applications, interviews, and post-offer medical examinations. Although many ADA rules that apply to applicants and new-hires are the same as the rules for employees, this section discusses some differences.

**A. Job Advertisements and Applications**

**1. ADA Information on job advertisements and job applications**

The EEOC advises employers to include information about the essential functions of the job in job announcements, advertisements, and other recruitment notices because specific information about essential functions will attract applicants, including individuals with disabilities, who have appropriate qualifications. All SOM vacancy postings notify applicants that the state is an equal opportunity employer and does not discriminate on the basis of disability.

**2. The ADA and affirmative action in hiring people with disabilities**

The ADA is a nondiscrimination law and does not require employers to undertake special activities to recruit people with disabilities. If applicants are invited to voluntarily self-identify, the employer must state clearly that the information requested is used solely for affirmative action purposes, that it is requested on a voluntary basis, that refusal to provide it will not subject the applicant to adverse treatment, and that it will be kept confidential and used only in accordance with the law.

### **3. Ensuring that the application process is inclusive to all applicants**

Employers must make reasonable accommodations to enable applicants with disabilities to apply for jobs. For example, information about jobs should be available in a location that is accessible to people with mobility impairments. All SOM vacancies are posted on the internet vacancy posting site and open to all qualified applicants. All application forms are made accessible by providing them in an alternate text format. The font size used for the site is recommended by [Department of Information Technology E-Michigan](#) and is the standard used by all agencies. Additionally, the font size can be increased by applicants as needed. Every vacancy posting and examination application contains information for applicants on how to request an accommodation. To accommodate applicants with disabilities at recruitment fairs, materials should be made available or sent to requesting individuals in alternate formats.

The State of Michigan will soon have an online application process with appropriate considerations for accessibility.

DMB Administrative Guide to State Government - [Accessibility Policy 1650.0](#)

DMB [SOM Accessibility Resource Guide](#)

[Civil Service Regulation 3.05](#), *Twelve-Month Trial Appointment Process for Persons with Disabilities*. Civil Service Form [CS-944](#) *Application for Person with Disabilities to Request Reasonable Accommodation in the Examination Process*

For more information on Relay Services visit the DHS [Telecommunications Relay Service](#). [Michigan Relay Center website](#)

Michigan Relay Service telephone number: **1-800-649-3777 or 711**

### **4. Accommodating applicants during pre-employment testing**

The method of accommodation depends on the individual applicant's limitations and the type of test involved, so each situation must be approached on a case by case basis. Every SOM examination application contains information for applicants on how to request an accommodation. The applicant returns the completed Civil Service Commission (CSC) exam application and indicates the need for an accommodation. Support staff on the CSC, Assessment Team will send a letter to the person to inquire about the type of accommodation needed. The requests are reviewed, on an individual basis, by the manager of the Assessment Team. If a reasonable accommodation cannot be made, the test may be waived for the applicant, and his or her name placed on the applicant list for that particular examination. Generally, the State of Michigan makes reasonable accommodations for examinations with some exceptions (i.e., state police or corrections.) The resources listed above (in #3) also contain information on testing accommodations.

### **5. Employers and job descriptions**

The State of Michigan uses and requires position descriptions for all positions. The essential functions are captured in Box 23 of most position descriptions. A written job description that is prepared before advertising or interviewing applicants for a job will be considered as evidence in determining essential functions along with other relevant factors.

The ADA does not limit an employer's ability to establish or change the content, nature, or functions of a job. It is the employer's right to establish what a job is and what functions are required to perform it. The ADA simply requires that the qualifications of an individual with a disability be evaluated in relation to the job's essential functions.

[Civil Service Position Description \(CS-214\)](#)

## **B. Job Interviews**

### **1. Medical questions during the application and interview process**

Under the ADA, employers may only ask disability-related questions or conduct medical examinations after making a conditional job offer to an applicant. For example, employers **cannot** ask whether an applicant has a physical or mental impairment, received workers compensation, or ever been addicted to illegal drugs. Employers cannot ask disability-related questions or require a medical examination before an offer, even if they intend to look at the answers or results only at the post-offer stage.

Although employers cannot ask disability-related questions or require medical examinations at the pre-offer stage, they **may** ask about an applicant's ability to perform the essential job functions, ask about an applicant's non-medical qualifications and skills, and ask applicants to describe or demonstrate how they would perform job tasks.

### **2. Accommodations and the interview process**

Employers have a responsibility to make reasonable accommodations to enable applicants with disabilities to participate in the interview process. Accommodations for interviews may include an accessible interview location for people with mobility impairments or a sign language interpreter for a person who is deaf. Every SOM vacancy posting states that "Applicants with disabilities who may need an accommodation to participate in the interview process should make such an accommodation request at the time they are contacted by a department representative to schedule an interview."

## **C. After a Job Offer**

### **1. Medical questions once a job offer is made**

Once a conditional job offer is made and before an employee begins work, employers may ask appropriate disability-related questions and require medical examinations, if done for all employees entering a particular job category. The employer must notify an individual (orally or in writing) if placement into an actual vacancy is in any way adversely affected by the results of a post-offer medical examination or disability-related question.

### **2. Rescinding a job offer without violating the ADA**

If an employer rejects an applicant after a post-offer, disability-related question or medical examination and the applicant files a complaint with the EEOC alleging discrimination, EEOC investigators will scrutinize whether the rejection was based on the results of that question or examination. If the question or examination screens out an individual because of a disability, the employer must demonstrate that the reason for the rejection is job-related and consistent with business necessity. For example, an otherwise qualified candidate is sent for a pre-employment physical and fails the physical requirements of the job. The candidate would no longer be considered qualified for the position and the job offer would be rescinded. If the individual is screened out for safety reasons, the employer must also demonstrate that the individual poses a "direct threat." This means that the individual poses a significant risk of substantial harm to the individual or others, and that the risk cannot be reduced below the direct threat level through reasonable accommodation.

## **III. REASONABLE ACCOMMODATION FOR EMPLOYEES**

One key non-discrimination requirement of Title I of the ADA is the obligation to provide reasonable accommodation for employees with disabilities. This section provides information about what policies and procedures might be useful, how to recognize and handle accommodation requests, how to determine effective accommodations, and what types of accommodations might be reasonable.

## A. Required Policies and Procedures

The ADA does not require specific policies or procedures, but the State of Michigan has a policy in place for accommodating its employees with disabilities. [Civil Service Commission Regulation 1.04](#) is the policy that all state agencies must follow. Civil Service also has several forms for the accommodation process. This formal process can help employers document their efforts to comply with the ADA.

Civil Service Commission forms include [CS 1668, "Disability Accommodation Request and Medical Statement"](#), [CS 1669, "Response to Disability Accommodation Request"](#) and [CS 1670, "Evaluation of Disability Accommodation"](#). These forms are available in an accessible format on the [Civil Service Commission](#) website. Use the above links to access the most current version of these forms.

## B. Accommodation Requests

### 1. Recognizing an accommodation request

An individual need not mention the ADA or use the phrase "reasonable accommodation" when requesting an accommodation. Therefore, any time an employee indicates a problem that is related to a medical condition, the employer should consider whether the employee is requesting accommodation under the ADA. The EEOC provides the following examples:

**Example A:** A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation.

**Example B:** An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting reasonable accommodation. He does not link his need for the new chair with a medical condition.

### 2. Handling the accommodation request

Initially, the supervisor or person receiving an accommodation request should respond, even if merely to explain the accommodation process and refer the employee to the agency Reasonable Accommodation Coordinator (RAC) to handle the request. The agency RAC has the responsibility to approve or deny accommodation requests. A [listing of agency RACs](#) is located on the Office of the State Employer, [Employee Health Management](#) website.

### 3. Asking an employee whether an accommodation is needed

An employer may ask an employee with a known disability whether a reasonable accommodation is needed when it reasonably believes that the employee may need an accommodation.

**Example A:** An employer could ask an employee who is deaf and being sent on a business trip, if a reasonable accommodation is needed to perform the essential job functions while on the business trip.

**Example B:** An employer is scheduling a luncheon and is uncertain about what questions it should ask to ensure that the restaurant is accessible. The employer may ask their employee who uses a wheelchair what accommodation may be needed to fully participate in the luncheon.

**Example C:** An employer also may ask an employee with a disability who is having performance or conduct problems if reasonable accommodation is needed.

### 4. Receiving an accommodation request

If an employee with a disability needs an accommodation to perform the essential functions of his or her job, it is generally the employee's responsibility to initiate the process of seeking an accommodation. The employer and the individual with a disability should engage in an interactive process to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual relevant questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.

The employee obtains the revised [CS-1668 form, "Disability Accommodation Request and Medical Statement"](#) and completes the first page. Then the employee should give the revised CS 1668 along with a copy of their position description (which includes essential duties) to their medical professional to complete page 2. When completed, the form is returned by the employee to their agency's RAC.

While researching an accommodation request, employers should try to make temporary accommodations to demonstrate good faith efforts to accommodate. This allows the employer time to make a determination on a permanent accommodation. If an employer does this, it should make clear to the employee that the interim accommodation is temporary.

The RAC is responsible for approving or denying reasonable accommodation requests. In doing so, the RAC may take several actions. First, the RAC may need to clarify information provided by the employee. The RAC typically will also seek input from the employee's immediate supervisor. If all appropriate information has been provided and the RAC knows which equipment and resources will be effective, the RAC may proceed to approve the accommodation.

If the RAC needs suggestions on office configurations, equipment, technology, etc., an evaluation may be requested from DELEG, Michigan Rehabilitation Services, Business Network Unit/Disability Management Program Accommodation Center (DMAC) via the [Request for Services](#) form. If needed, the DMAC will consult with the Michigan Commission for the Blind (MCB) or Division on Deaf and Hard of Hearing (DODHH).

After receiving any recommendations from the DMAC, the RAC will continue the interactive process. This may include seeking further information, suggesting alternatives to the requested accommodation, or approving or denying the request. An accommodation might be denied for a variety of reasons, including the employee might not have a disability as defined by law or the requested accommodation might not be reasonable. The RAC will send a completed [CS-1669 form, "Response to Disability Accommodation Request"](#) to the employee indicating approval, denial, or alternative accommodation.

If the employee is dissatisfied with the final response of the RAC or the RAC fails to issue a final response within eight weeks, the employee may appeal through the appropriate departmental process, grievance procedure, or take other action as authorized by law.

The RAC acts within the agency to ensure employee accommodation issues are addressed effectively and timely. The RAC may also need to act as an intermediary between the employee's agency and other state agencies with a role in specific accommodations. The RAC evaluates accommodations too and will initiate an evaluation process approximately one month after accommodations are put in place. The RAC does this by completing the [CS-1670 form, "Evaluation of Disability Accommodation."](#) This form is sent to the employee and immediate supervisor to evaluate the effectiveness of the accommodation and whether it enables the employee to perform the essential job functions.

[Reasonable Accommodation Process Flow Chart](#)

[Employee Accommodation Procedure](#)

## **5. Medical information and accommodation requests**

Under the ADA, employers must limit the scope of a medical inquiry in response to an accommodation request. When the disability or need for accommodation is not obvious, an employer may require that the employee provide medical documentation to establish that the employee has an ADA disability, to show that the employee needs the requested accommodation, and to help determine effective accommodation options. Although the ADA limits the scope of medical requests, it does not include specific forms for requesting medical information. The back of the updated CS-1668 form contains appropriate questions and should provide sufficient information to make a disability determination.

## **6. Choosing an accommodation**

Employers get to choose among effective accommodation options. While an employee's preference is given consideration in the accommodation process, agencies can choose an alternate accommodation, if it is effective and allows the employee to do the essential functions of the job.

Job restructuring, as a reasonable accommodation, includes modifications such as (1) reallocating or redistributing marginal job functions that an employee cannot perform and (2) altering when or how essential or marginal functions are performed. Reasonable accommodation does **not** include removing one or more essential job functions, creating new jobs, or providing personal need items such as eyeglasses and mobility aids. Nothing in the ADA prohibits employers from providing these types of accommodations; they simply are not required. Also, a particular accommodation request may be considered an undue hardship, especially if it is administratively very cumbersome.

If an employer chooses to do more than is required under the ADA, it should do so in a non-discriminatory manner. Accommodations are provided on a case-by-case basis, but they may set a precedent for future accommodations. If an employee becomes aware of an accommodation provided by the agency to another employee with the same disability, it may create an expectation that the employee will receive the same accommodation.

An employer need not create a light-duty position for an injured employee with a disability as a reasonable accommodation. The fact that the ADA does not require employers to create positions as a form of reasonable accommodation applies equally to light-duty positions. An employer is free to determine that a light-duty position will be temporary rather than permanent.

### **C. Accommodation Issues**

#### **1. Work-Site Accessibility**

##### **a. Modifications of the work-site**

Under Title I, an employer is not required to make its existing facilities accessible until a particular applicant or employee with a particular disability needs an accommodation, and then the modifications should meet that individual's work needs. The employer does not have to make changes to provide access in places or facilities that will not be used by that individual for employment related activities or benefits. However, state and local governments must conform to more extensive accessibility requirements under Title II and Title III when altering existing facilities or undertaking new construction.

When making changes to meet an individual's needs under Title I, an employer will find it helpful to consult the applicable Department of Justice, ADA [Accessibility Guidelines](#) as a starting point. It is advisable to make changes that conform to these guidelines, if they meet the individual's needs and do not impose an undue hardship, since such changes will be useful in the future for accommodating others. Even if a modification meets the standards required under Title II or III, further adaptations may be needed to meet the needs of a particular individual. For example, a restroom may be modified to meet standard accessibility requirements (including wider door and stalls, and grab bars in specified locations) but it may be necessary to install a lower grab bar for a person of short stature in a wheelchair so that this person can transfer from the chair to the toilet.

##### **b. Emergency evacuation**

The Department of Management and Budget (DMB) encourages each state-owned facility to have its own evacuation plan. Part of this plan is to have monitors on each floor who are informed of employees with disabilities on their floor and (1) work with the employees to ensure their evacuation or (2) stay with them in fire-safe stairwells, until their evacuation by trained fire or rescue workers.

### **c. Parking**

Unless parking is provided for other employees an employer does not have to provide parking as an accommodation. The State of Michigan does not provide parking for all its employees and does not consider parking a benefit of employment. In 2006, the DMB Facilities Administration, Security and Emergency Management Section established uniform procedures for assigning handicap parking in DMB-managed parking areas. The policy does not supersede the promulgated rules (Administrative Code R18.401 – 18.426, Parking on State Property), but clarifies the handicap/disability parking assignment process. Employees requesting handicap/disability parking should be referred to the [DMB Parking Office](#). The parking office will direct employees on the process for assigning handicap/disability parking on DMB-managed parking areas.

Unless the employer generally provides transportation for its employees an employer is not required to provide transportation as a reasonable accommodation for a commute to work. However, where an employer's policy on work schedules creates a barrier for an individual whose disability interferes with his or her ability to commute to work, the employer must modify that policy as a reasonable accommodation, unless it would impose an undue hardship. For example, an individual who uses a wheelchair and commutes by public transportation may need a later arrival time in inclement weather.

### **d. Reduction in hours**

According to informal EEOC guidance, when an employee asks to cut hours significantly, the employee is, in essence, asking for reassignment to an existing part-time job. The employee is fundamentally requesting a job change when requesting a significant cut in hours (e.g., in half). Cutting job hours entails cutting essential functions if "essential function" embodies the amount of work accomplished. You could also say that you would be cutting the production standard, which is not simply an hourly standard, but also a standard that measures how much should be produced in a full-day.

Reducing the hours of a job would be changing a qualification standard of the job; specifically, the ability to work full-time. The employer should always be able to show that it created a full-time position because there is sufficient work that requires working full-time. As such, the qualification to work full-time meets the business necessity standard, so it is not a reasonable accommodation to cut the hours.

If there is only a minimal cut in hours, it might be possible to show that the essential functions, the productivity standard, or a qualification standard of the position will not be changed, despite the slight decrease in hours. In this case, an employer might need to eliminate marginal functions to permit the employee to complete all essential functions. Additionally, [Alternative Work Scheduling](#) (AWS) was established in 2008 to better help state employees manage busy schedules, long commutes, and high fuel prices. This program has also benefited people in need of a change in their work schedule as a reasonable accommodation.

### **e. Part-time work with full-time pay and benefits**

This is not required under the ADA, unless the employer maintains pay and benefits for employees without disabilities whose jobs change from full-time to part-time. The State of Michigan does allow employees to go on a [Voluntary Work Schedule Adjustment](#), Plan A, [Civil Service Rule 5-2.3](#) Under Plan A; an employee may reduce the number of scheduled work hours by 1 to 16 hours per pay period. In addition, for one pay period in a fiscal year, an employee may reduce the number of scheduled work hours by up to 40 hours.

## **2. Modified Policies**

### **a. 100% restriction-free policies**

According to informal EEOC guidance, requiring an employee to be 100% restriction-free can violate the ADA when applied to an employee with a disability.

## **b. Conduct rules, dress codes, and hygiene requirements**

An employer never has to excuse a violation of a uniformly applied conduct rule that is job-related and consistent with business necessity. For example, an employer never has to tolerate or excuse violence, threats of violence, stealing, or destruction of property. An employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on employees without a disability. Since reasonable accommodation is always prospective, an employer is not required to excuse past misconduct even if it is the result of the individual's disability. [The Americans With Disabilities Act: Applying Performance And Conduct Standards To Employees With Disabilities](#) gives guidance on discipline and conduct issues related to employees with disabilities.

The EEOC views dress codes and hygiene requirements as "conduct rules," but classifies them as the type of conduct rule that must be justified as job-related and consistent with business necessity before being enforced (consult agency policies and appropriate collective bargaining agreements regarding dress codes.) Therefore, if a person with a disability requests modification of a dress code or hygiene requirement as an accommodation, an employer must consider allowing the modification unless it can show that the dress code or hygiene requirement is necessary for the job at issue.

## **3. Equipment and Services**

### **a. Requiring specialized work equipment**

Sometimes employees may require specialized work equipment that costs more than regular equipment. If the equipment is a personal-use item, the employer does not have to provide it. For example, if an employee has to wear a special type of boot all the time, the employer does not have to pay for it. Common items that fall into the personal-use items category are hearing aids, glasses and mobility devices.

On the other hand, if the personal-use item is necessary only for work and constitutes an accommodation, the employer would have to pay the entire cost of the item. If the personal-use item constitutes a tool of the trade (e.g., customized boots or amplified stethoscopes) and are necessary to get the job done, the employer must pay for the specialized items as a form of equal treatment if the employer provides the items for other employees.

### **b. Obligation to provide equipment or items for work only**

That an individual chooses to forego personal use items at home (a wheelchair, hearing aids, protective clothing) does not mean that such items become work-related because they are needed on the job. The limitations prompting the need for the hearing aids exist on and off the job and thus they remain personal use items. However, employers may still have to provide a reasonable accommodation even though they are not obligated to provide personal use items. For example, an employer might have to provide an amplified telephone or alternative means of communication for an employee with a hearing impairment.

### **c. Personal need items or services in the workplace**

Allowing an employee with a disability to use a personal need item (canes, walkers, wheelchairs, hearing aids, etc.) or service (personal attendant care, service animals, etc.) in the workplace is a form of reasonable accommodation. For example, it would be a reasonable accommodation for an employer to permit an individual who is blind to use a guide dog at work, even though the employer would not be required to provide a guide dog for the employee. If the equipment would pose a threat or fundamentally change the way the work is done, the equipment or personal need item would not need to be allowed in the workplace.

### **d. Personal assistance services (PAS)**

Under the ADA, reasonable accommodation can include PAS in the form of work-related assistance, but generally does not include PAS in the form of personal attendant care at the work-site. Work-related

PAS can include task-related assistance at work, such as readers, interpreters, help with lifting or reaching, page turners, a travel attendant to act as a sighted guide to assist a blind employee on occasional business trips, and re-assignment of non-essential duties to co-workers.

**e. Personal attendant care (PAC) for work-related travel**

According to informal EEOC guidance, the ADA does not require employers to provide personal attendant care on the job because reasonable accommodation does not require employers to provide personal need items or services. However, when an employee travels for work and incurs personal attendant care expenses beyond usual expenses when not traveling for work, the employer may be required to pay the added costs.

**f. Coworkers voluntarily assisting with personal needs**

Coworkers should be prohibited from providing personal assistance due to liability and other factors such as disruption in the workplace. Coworkers may assist an employee with a disability, with minor activities such as taking off and putting on a coat. When more difficult assistance is needed, such as toilet transfers or administering medications, employees must provide their own PAC. Under the ADA's reasonable accommodation obligation employers must consider allowing employees with disabilities to have their own personal attendant in the workplace, absent undue hardship.

**g. Job coaches**

An employer may be required to provide a temporary job coach to assist in training a qualified individual with a disability as a reasonable accommodation, barring undue hardship. An employer also may be required to allow a job coach paid by a public or private social service agency to accompany the employee at the job site as a reasonable accommodation.

**h. On-the-job travel**

Employers must consider accommodations such as alternative methods of transportation for work-related travel when driving is not an essential function of the job.

**IV. EMPLOYEES ON LEAVES**

The ADA requires employers to provide accommodations to ensure that employees with disabilities receive equal benefits of employment. For employees on leave, benefits of employment may include health, job protection, and bonuses and promotions.

**A. Health and Disability Insurance**

The interplay between the nondiscrimination principles of the ADA and employer-sponsored benefits such as health insurance and long term disability can be very complex. The EEOC has two publications that may help employers understand how the ADA applies to employer-sponsored benefits: [Interim Enforcement Guidance](#) and a [Compliance Manual](#).

The ADA does not prohibit health insurance eligibility requirements that do not discriminate on the basis of disability, if such requirements are applied in the same manner to all employees. A requirement that employees work a certain number of hours to remain eligible for health insurance benefits does not discriminate on the basis of disability. It limits both individuals with and without disabilities. Thus, for example, an employee who works reduced hours for some other reason, such as attending school, would also be subject to a reduction or loss of health insurance benefits.

**B. Bonuses and Promotions**

Bonuses and promotions need to be based on non discriminatory performance and qualification standards. An employer should not deny a bonus or promotion based on the request of or use of a reasonable accommodation such as a leave of absence. A denial for this reason could be seen as

retaliation for the employee's use of a reasonable accommodation to which he or she is entitled under the law. Moreover, such punishment could make the accommodation utilized an ineffective accommodation, thus making an employer liable for failing to provide a reasonable accommodation.

**C. Reductions in Force and Layoffs**

Although the ADA protects individuals with disabilities against discrimination on the basis of disability, employees with disabilities are not protected against nondiscriminatory layoffs. When deciding to terminate or layoff employees, employers need to ensure that decisions are based on business needs.

## V. RESOURCES

### Section I

Information and training on the ADA in the ADA Basics online tutorial: [www.adabasics.org/](http://www.adabasics.org/)

Information on the ADA in the Job Accommodation Network (JAN) *ADA Handbook*:  
[www.jan.wvu.edu/media/adahandbook/handbook.html](http://www.jan.wvu.edu/media/adahandbook/handbook.html) .

Information on the ADA Amendments Act of 2008 in the Accommodation and Compliance Series: The ADA Amendments Act of 2008: [www.jan.wvu.edu/bulletins/adaaa1.htm](http://www.jan.wvu.edu/bulletins/adaaa1.htm)

A copy of Title I of the ADA: [www.eeoc.gov/policy/ada.html](http://www.eeoc.gov/policy/ada.html)

Information on covered entities: [www.eeoc.gov/policy/docs/threshold.html#2-III-B](http://www.eeoc.gov/policy/docs/threshold.html#2-III-B)

Information on the definition of qualified: [www.jan.wvu.edu/links/ADAтам1.html#II](http://www.jan.wvu.edu/links/ADAтам1.html#II)

Information on the definition of employee: [www.eeoc.gov/policy/docs/threshold.html#2-III-A-1](http://www.eeoc.gov/policy/docs/threshold.html#2-III-A-1)

Information on the definition of disability in *How to Determine Whether a Person has a Disability under the Americans with Disabilities Act (ADA)*: [www.jan.wvu.edu/corner/vol02iss04.htm](http://www.jan.wvu.edu/corner/vol02iss04.htm).

Information on essential functions in the EEOC's *Title I Technical Assistance Manual*:  
[www.jan.wvu.edu/links/ADAтам1.html](http://www.jan.wvu.edu/links/ADAтам1.html), section 2.3(a).

Information on reasonable accommodation under the ADA in *Reasonable Accommodation and Undue Hardship*: [www.eeoc.gov/policy/docs/accommodation.html](http://www.eeoc.gov/policy/docs/accommodation.html).

### Section II

Information on accommodation in [Civil Service Rule 1-7 Equal Employment Opportunity](#), [Civil Service Rule 1-8 Prohibited Discrimination](#), [Civil Service Regulation 3.05 Twelve-Month Trial Appointment Process for Persons with Disabilities](#).

EEOC *Title I Technical Assistance Manual*: [www.jan.wvu.edu/links/ADAтам1.html](http://www.jan.wvu.edu/links/ADAтам1.html).

*Pre-Employment Disability-Related Inquiries and Medical Exams*:  
[www.eeoc.gov/policy/docs/preemp.html](http://www.eeoc.gov/policy/docs/preemp.html).

Office of Disability Employment Policy: <http://www.dol.gov/odep/>

Information on making online applications accessible: [www.jan.wvu.edu/corner/vol02iss05.htm](http://www.jan.wvu.edu/corner/vol02iss05.htm).

Information on *Accommodations for Testing*: [www.jan.wvu.edu/media/testingaccomm.html](http://www.jan.wvu.edu/media/testingaccomm.html).

Information on *Job Descriptions*: [www.jan.wvu.edu/media/jobdescriptions.html](http://www.jan.wvu.edu/media/jobdescriptions.html).

Information on *Pre-Offer, Disability-Related Questions: Dos and Don'ts*:  
[www.jan.wvu.edu/media/preofferfact.doc](http://www.jan.wvu.edu/media/preofferfact.doc).

Information on *Pre-employment Disability-Related Inquiries and Medical Exams*:  
[www.eeoc.gov/policy/docs/preemp.html](http://www.eeoc.gov/policy/docs/preemp.html).

### Section III

The EEOC's Enforcement Guidance in "[The Americans With Disabilities Act: Applying Performance And Conduct Standards To Employees With Disabilities](#)."

Information on medical inquiries: [www.jan.wvu.edu/media/medical.htm](http://www.jan.wvu.edu/media/medical.htm).

Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA: [www.eeoc.gov/policy/docs/guidance-inquiries.html](http://www.eeoc.gov/policy/docs/guidance-inquiries.html).

Information on the accommodation process: [www.jan.wvu.edu/media/FivePracticalTips.doc](http://www.jan.wvu.edu/media/FivePracticalTips.doc)

The EEOC's *Title I Technical Assistance Manual*, chapter 3, section 3.10:  
[www.jan.wvu.edu/links/ADAтам1.html#III](http://www.jan.wvu.edu/links/ADAтам1.html#III).

ADA Accessibility Guidelines: [www.access-board.gov/adaag/html/](http://www.access-board.gov/adaag/html/)

Information on accommodating employees during emergency evacuation:  
[www.jan.wvu.edu/media/emergency.html](http://www.jan.wvu.edu/media/emergency.html).

Information on emergency preparedness and people with disabilities:  
[www.dol.gov/odep/programs/emergency.htm](http://www.dol.gov/odep/programs/emergency.htm).

Information on parking issues: [www.jan.wvu.edu/corner/vol01iss14.htm](http://www.jan.wvu.edu/corner/vol01iss14.htm) and  
[www.jan.wvu.edu/corner/vol03iss01.htm](http://www.jan.wvu.edu/corner/vol03iss01.htm).

Information on the interplay between the ADA, FMLA, and Title VII:  
[www.eeoc.gov/policy/docs/fmlaada.html](http://www.eeoc.gov/policy/docs/fmlaada.html).

Information on handling hygiene issues in the workplace:  
[www.jan.wvu.edu/media/employmenthygienefact.doc](http://www.jan.wvu.edu/media/employmenthygienefact.doc).

Information on work at home as an accommodation: [www.eeoc.gov/facts/telework.html](http://www.eeoc.gov/facts/telework.html).

Information on Personal Assistance Services (PAS) in the Workplace:  
[www.jan.wvu.edu/media/PAS.html](http://www.jan.wvu.edu/media/PAS.html).

#### **Information and Resources:**

Michigan *Persons with Disability Civil Rights Act*: [http://www.michigan.gov/documents/PWDCRA10-05\\_115444\\_7.pdf](http://www.michigan.gov/documents/PWDCRA10-05_115444_7.pdf)

JAN and the EEOC have sample accommodation policies and procedures on their websites:  
[www.jan.wvu.edu/links/adapolicies.html](http://www.jan.wvu.edu/links/adapolicies.html)

*Job Accommodation Process*: [www.jan.wvu.edu/media/JobAccommodationProcess.html](http://www.jan.wvu.edu/media/JobAccommodationProcess.html)

*Reasonable Accommodation and the ADA*: [www.jan.wvu.edu/ErGuide/ErGuide.pdf](http://www.jan.wvu.edu/ErGuide/ErGuide.pdf)

*Establishing Procedures to Facilitate the Provision of Reasonable Accommodation*:  
[www.eeoc.gov/policy/docs/accommodation\\_procedures.html](http://www.eeoc.gov/policy/docs/accommodation_procedures.html)

*Internal Accommodation Procedures*:  
[www.eeoc.gov/policy/docs/accommodation\\_procedures\\_eeoc.html](http://www.eeoc.gov/policy/docs/accommodation_procedures_eeoc.html)

*Practical Advice for Drafting and Implementing Reasonable Accommodation Procedures under Executive Order 13164*: [www.eeoc.gov/federal/implementing\\_accommodation.html](http://www.eeoc.gov/federal/implementing_accommodation.html)

*The DISABILITY LAW Handbook*: [www.swdbtac.org/html/publications/dlh/disabilitylawhandbook.pdf](http://www.swdbtac.org/html/publications/dlh/disabilitylawhandbook.pdf)

Information on disability etiquette: [www.jan.wvu.edu/media/employmentetifact.doc](http://www.jan.wvu.edu/media/employmentetifact.doc).